



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF; CNR, MNSD, OLC

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenants' cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62.

The tenants did not participate in the conference call hearing to present their claim; consequently the tenants' entire application is dismissed without leave to reapply.

The landlords' agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlords' named in this application, and had authority to speak on their behalf.

The landlord testified that on April 1, 2017 the landlords' application for dispute resolution hearing package was sent via registered mail to the tenants. The landlords provided Canada Post tracking numbers as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application and supporting documents on April 6, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on January 1, 2017 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord testified that the tenants were served with the landlord's 10 Day Notice, dated March 5, 2017, on March 6, 2017, by way of posting to the rental unit door where the tenants are residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on March 9, 2017, three days after its posting.

The 10 Day Notice was issued for unpaid rent in the amount of \$1,000.00 due on March 1, 2017.

The landlords seek a monetary order of \$2,000.00 for unpaid rent from March 2017 to April 2017. The landlord claimed that the tenants have not paid any rent for the above two months.

The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent and their application has

been dismissed, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,000.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from March 2017 to April 2017. Therefore, I find that the landlord is entitled to \$2,000.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,500.00. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,600.00.

Conclusion

The tenants' application is dismissed in its entirety.

I grant an order of possession to the landlords effective **two (2) days after service on the tenants**.

I issue a monetary order in the landlords' favour in the amount of \$1,600.00 against the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2017

Residential Tenancy Branch