



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, OPN, MNR

For the tenants – MT, CNR, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession because the tenants have given notice to end their tenancy; and for a Monetary Order for unpaid rent or utilities. The tenants applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and other issues.

The tenants and an agent for the landlord (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Are the tenants entitled to more time to file an application to dispute a Notice to End Tenancy?
- Are the tenants entitled to dispute the 10 day Notice to End Tenancy?

Background and Evidence

The parties agreed that this fixed term tenancy started on September 01, 2016. Rent for this unit is \$1,350.00 per month due on the 1st of each month. The tenants paid a security deposit of \$675.00 on September 01, 2016.

The landlord testified that the tenants failed to pay the rent due on February 01, 2017. The tenants had indicated at the beginning of the month that their rent would be late but informed the landlord that it would be paid by February 10, 2017. No rent was paid on February 10, 2017 and the landlord waited until after the weekend before speaking to the tenants again to give them a few more days to pay the rent. The tenants did offer to pay \$1,000.00 but the landlord suggested that they keep that money instead to try to find a less expensive place to live and move out of the unit. The tenants did not vacate the rental unit and did not offer to pay any further rent. The landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on February 14, 2017. The Notice was served in person to the tenants. The tenants had five days to either pay the outstanding rent in full, apply for Dispute Resolution or the tenancy would end on February 25, 2017. The tenants did not pay the outstanding rent and did not file an application to dispute the Notice within the five allowable days.

The landlord testified that he waited the 10 days for the effective date of the Notice to take effect and went back to the unit to speak to the tenants about moving out. At that time the tenants indicated to the landlord that they would move out; however, as it was below zero outside the landlord agreed they could stay another night as they had two children. The next day the landlord returned to the unit and the tenants gave the landlord the keys and said they had found somewhere else to live; however, this fell through and the landlord continued to let the tenants stay in the unit while they tried to get someone to help them. On March 01, 2017 the landlord informed the tenants that rent was due. The tenants said they would try to pay the landlord but the landlord felt that was unlikely to occur. No rent was paid for March, 2017. The total amount of unpaid rent is now \$2,700.00.

The landlord seeks a Monetary Order to recover the unpaid rent and has applied for an Order of Possession to take effect as soon as possible.

The tenants testified that they agree they did not pay the rent for February or March but testified that the landlord would not accept the \$1,000.00 offered when the tenants were served the Notice. The tenants testified that he told the landlord he would pay the rest as soon as possible as they wanted to stay in the unit. The tenants testified that they have two children and they tried to find a place in transitional housing and in hotels but were unsuccessful. The tenants appreciate that the landlord has allowed them to stay in the unit. The tenant testified that he does not think the landlord tried to take the rent out of the bank for March through a pre-authorized payment. The tenants agree that they do owe \$2,700.00.

The tenants testified that they filed their application late as CT had some court stuff to deal with and SC could not do it as she has two children to care for. CT testified that he was arrested on February 20, 2017 and was held for three days so was not able to file their application within the time frame. CT testified that he was later exonerated by the police. The tenants seek an Order to cancel the Notice and for the tenancy to continue.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that there is outstanding rent for February and March, 2017 of \$2,700.00 I have insufficient evidence from the tenants that they attempted to pay the rent in full due to the landlord. Consequently, it is my decision that

the landlord is entitled to recover **\$2,700.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

The tenants have requested more time to file their application; I refer the parties to s.66 (1) of the *Act* which states:

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

The tenants testified that they were unable to file their application within the five allowable days as the male tenant had been arrested; however, the tenant was arrested on February 20, 2017 and the fifth day they had to file this application was February 19, 2017. As the tenants have not provided any exceptional or compelling circumstances as to why they filed their application late, I dismiss their application without leave to reapply.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,700.00** pursuant to s. 67 of

the *Act*. The Order must be served on the tenants; if the tenants fail to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenants. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenants' application is dismissed without leave to reapply.

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 03, 2017

Residential Tenancy Branch