



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR, MNR, MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by one of the tenants and by the landlords. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities, and the landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit.

The landlords both attended the hearing and one landlord gave affirmed testimony. However, the line remained open while the phone system was monitored for in excess of 10 minutes prior to hearing any testimony and no one for the tenants joined the call. Therefore, I dismiss the tenant's application without leave to reapply.

The landlords have provided evidence that the tenants were served with the landlords' hearing package by registered mail on April 11, 2017, sent to each of the named tenants separately, both of which were returned to the landlords unclaimed. Both also contain the address of the rental unit, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The landlords had also provided evidentiary material to the Residential Tenancy Branch on April 24, 2017 which was not before me prior to the hearing. I have now received that material and I have determined that a clerical error resulted in the material not being available for the hearing. All evidence of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the landlords be granted an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 21, 2016 and the tenant and family still reside in the rental unit. Rent in the amount of \$950.00 per month is payable on the 3rd Friday of each month, however there is no written tenancy agreement. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit is a manufactured home, not in a manufactured home park, but on property owned by the landlords.

The landlord further testified that the tenants paid the landlords \$800.00 for February's rent, leaving a balance of \$150.00 owing. On March 30, 2017 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided and it is dated March 30, 2017 and contains an effective date of vacancy of April 9, 2017 for unpaid rent in the amount of \$1,100.00 that was due on March 24, 2017. The tenants have not paid any rent since the notice was issued, and the tenants are now in arrears of rent \$3,000.00, being \$150.00 for February and \$950.00 for each of March, April and May, 2017.

The landlords seek an Order of Possession, an order permitting the landlords to keep the \$475.00 security deposit; and a monetary order for the balance of \$2,525.00.

Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. The tenants and the landlords have provided the first page only of a 2-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. No one has provided a copy of the entire 2-page form and therefore I cannot be satisfied that the notice given is in the approved form, and I decline to grant an Order of Possession. The landlords are at liberty to reapply.

I accept the undisputed testimony of the landlord that the tenants are in arrears of rent the sum of \$3,000.00, being \$150.00 for February, \$950.00 for March, \$950.00 for April and \$950.00 for May, 2017.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$475.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference of \$2,625.00.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The landlord's application for an Order of Possession is hereby dismissed with leave to reapply.

I hereby order the landlords to keep the \$475.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,625.00.

This order is final and binding and may be enforced.

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: May 17, 2017

Residential Tenancy Branch