



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LU'MA NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

On May 17, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords agent ("the Landlord") attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Hearing on May 20, 2017, using registered mail. The Landlord provided a copy of the registered mail receipts and tracking numbers.

I find that the Tenants have been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* ("the Act").

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2015, as a month to month tenancy. Rent is geared to income and assessed yearly. Rent in the amount of \$993.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$578.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement rent when it was due.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 17, 2017, ("the Notice"). The Landlord testified that she served the Notice by posting it to the Tenants' door on by April 19, 2017.

The Notice states that the Tenant has failed to pay rent in the amount of \$2,776.19 which was due on April 1, 2017. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that that the Tenants filed an application to dispute the Notice.

The Landlord testified that the Tenants did not pay the outstanding rent within 5 days of receiving the Notice.

The Landlord testified that the Tenants still owe rent for the following months:

- February 2017, in the amount of \$390.19
- March 2017, in the amount of \$993.00
- April 2017, in the amount of \$993.00
- May 2017, in the amount of \$993.00
- June 2017, in the amount of \$993.00

The Landlord requested to amend her application to include unpaid rent for June 2017.

The Landlord testified that the Tenants made a payment of \$1,000.00 towards the unpaid rent on May 17, 2017. The Landlord provided a copy of the receipt that states for use and occupancy only.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$2,972.19.

The Landlord is seeking to keep the security deposit of \$578.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I grant the Landlord's request to amend the application to include June 2017, rent of \$993.00. The Tenants are aware that they are required to pay the rent due under the tenancy agreement and they are still living in the rental unit.

I find that the Tenants owe the Landlord \$2,972.19 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$578.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3072.19 comprised of \$2972.19 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$578.00 towards the claim of \$3,072.19. I find that the Landlord is entitled to a monetary order in the amount of \$2,494.19. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the security deposit in the amount of \$578.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2,494.19.

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: June 29, 2017

Residential Tenancy Branch