



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. However, there was no appearance for the Tenants during the eight minute hearing or any submission of evidence by them prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that he served each Tenant with a copy of the Application and the Hearing Package to the rental unit address. This was done by registered mail on June 23, 2017. The Landlord provided a copy of the Canada Post tracking receipts as evidence to verify this method of service.

The Canada Post website shows that the male Tenant signed for each package sent to the Tenants on June 28, 2017. Based on the undisputed evidence before me, I find the the Tenants were served pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord explained that the Tenants had abandoned the rental unit at some point in July 2017 and he had obtained possession of the rental unit. Therefore, I dismissed the Landlord's Application for an Order of Possession. During the hearing, the Landlord requested that he be allowed to keep the Tenants' security deposit in partial satisfaction of the claim for unpaid rent. Pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord's Application to include this request.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for June 2017?
- Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

The Landlord testified that this month to month tenancy started on May 1, 2016. Rent of \$775.00 was payable on the first day of each month. The Tenants paid a security deposit of \$337.50 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenants failed to pay rent on June 1, 2017. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenants' door on June 2, 2017. The Notice was provided into evidence with an unpaid rent amount of \$775.00 and a vacancy date of June 16, 2017.

The Landlord testified that the Tenants never paid any rent for June 2017 and abandoned the rental unit at some point in July 2017 leaving him behind with the rental arrears. The Landlord confirmed that he only wanted to claim for June 2017 unpaid rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

I accept the undisputed evidence of the Landlord, along with the Notice, that the Tenants failed to pay rent of \$775.00 for June 2017 and are therefore liable for this amount.

As the Landlord has been successful in his monetary claim, pursuant to Section 72(1) of the Act, I grant the Landlord's request to recover the \$100.00 filing fee from the Tenants for the cost of this Application. Therefore, the total amount payable by the Tenants to the Landlord is **\$875.00** (\$775.00 + \$100.00).

As the Landlord already holds the Tenants' **\$337.50** security deposit, I grant the Landlord's request to keep this amount pursuant to Section 72(2) (b) of the Act in partial satisfaction of the monetary claim.

As a result, the Landlord is issued with a Monetary Order for the outstanding balance of **\$537.50** (\$875.00 - \$337.50). Copies of this Order are attached to the Landlord's copy of this Decision.

This order must be served on the Tenants and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court. The Tenants may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlord may keep the Tenants' security deposit and is issued with a Monetary Order for the remaining balance of \$537.50. The Landlord's Application for an Order of Possession is dismissed without leave to re-apply as the Tenants have vacated the rental unit and this is now a moot issue.

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

Dated: July 27, 2017

Residential Tenancy Branch