



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes: OPR, MNR, MNSD, MNDC, CNR, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 12, 2017 (the “10 Day Notice”).

The landlords applied for an order of possession for unpaid rent and a monetary order for unpaid rent and damage to the rental unit. The landlords also sought authorization to retain the tenant’s security and pet deposits, and recovery of the application filing fee.

The tenants sought cancellation of the 10 Day Notice and recovery of the application filing fee.

One of the landlords attended the hearing. Neither tenant attended. The landlord was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenants did not attend the hearing, service of the landlords’ application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant with these materials and his first evidence package by registered mail sent on June 23, 2017. A Canada Post tracking number was provided in support. Based on the landlord’s evidence, I accept that the tenants were served on June 28, 2017, five days after the registered mail was posted, in accordance with s. 90 of the Act.

At the outset of the hearing the landlord advised that they became aware that the tenants had vacated the rental unit on July 8, 2017 and that they have since changed the locks and organized substantial cleaning and repair of the rental unit. Accordingly, the landlord withdrew his request for an order of possession.

Issues to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the landlords entitled to compensation?

Are the landlords entitled to retain the security deposit?

Is either party entitled to recover the application filing fee?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on February 1, 2017. It was a fixed term tenancy which would have reverted to a month to month tenancy after January 31, 2018. The tenancy agreement is signed by both of the tenants.

Monthly rent of \$2,150.00 was due on the first of the month. The tenants were also responsible for 2/3 of the utilities as per an addendum to the tenancy agreement. A security deposit of \$1,075.00 and a pet deposit of \$500.00 were paid at the beginning of the tenancy and remain in the landlords' possession.

The landlord testified that the tenants did not pay rent for June. The 10 Day Notice was posted on the door of the rental unit on June 13, 2017. The landlords attended at the rental unit, which is in another city, on July 8, 2017 because they were asked by the downstairs tenants in the same rental property to investigate a leak. They provided the respondent tenants advance notice as required. At that point the landlords found the rental unit in question vacant. The tenants have not left a forwarding address and are no longer responding to phone calls or emails.

The landlord further testified that the rental unit in question appears to have been vandalized. The washing machine had a greasy substance in the basin and was not draining (resulting in the leak that the landlords were required to investigate). The electronics had been ripped out of the stacking laundry unit. There were holes the size of fists in the drywall and the windows were left open and the air conditioning on. The fire extinguisher and smoke alarms provided to the tenants were broken and/or missing.

The landlord testified that his insurer has advised that it does not cover intentional damage.

The landlord had sent a second package of evidence to the Residential Tenancy Branch on July 17, 2017. As I did not have it before me I asked the landlord to resend it and he did so. The landlord said that he had provided this material to the tenants by email.

The landlord provided photographs of the state of the rental unit and some of the damage. He also provided invoices for the amounts claimed for cleaning, repair and repainting of the damaged drywall, and replacement of missing or damaged items.

The landlords have spent July and a portion of August attending to the repair and cleaning of the rental unit. They have not collected rent for those months, and they claim for unpaid rent and/or loss of rental income for June, July, and August. They also claim for the tenants' 2/3 share of the utilities. Receipts were provided for the utilities claimed.

Also in evidence from the landlords were condition inspection reports. The move-in report was signed by one of the tenants. The move-out inspection report was conducted by the landlords after the tenants had abandoned the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. Based on the landlord's undisputed testimony, I find that the tenants was served with the 10 Day Notice on June 16, 2017, three days after it was posted as per s. 90 of the Act. The tenants have not attended at the hearing of their own application to dispute the 10 Day Notice and have not paid outstanding rent.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenants to take either of the above actions within five days led to the **end of this tenancy on June 26, 2017**, the corrected effective date on the 10 Day Notice.

Sections 7 and 67 of the Act establish 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. The landlord provided undisputed evidence that the tenants owe outstanding rent and that the landlords have lost rental income as a result of the condition of the unit when the tenants vacated. Accordingly, I award the landlords \$6,450.00 total claimed for the months of June, July, and August.

The landlord also provided copies of the utilities bills owing since the beginning of the tenancy and I award the landlord 2/3 of these amounts as per the tenancy agreement addendum.

I also accept the landlord's undisputed oral and documentary evidence as to the condition of the rental unit before and after this tenancy and as to the amounts spent to clean and repair it and to replace damaged items, including the stacking washer/dryer unit and the fire extinguisher and closet door.

I award the landlords the total amount claimed for drywall repair and painting because, although a landlord is expected to periodically repaint a rental unit, this tenancy had only been in effect for about five months, and the repainting was required largely because of the tenants' damaging the walls.

As the landlords were successful in this application, I find that they are also entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenants' security and pet deposits totalling \$1,575.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain these deposits in partial satisfaction of the monetary claim.

Conclusion

I issue a monetary order for the landlords in the following terms, which allows the landlords to obtain a monetary award for unpaid rent and utilities, loss of rental income, damage to the rental unit and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent and loss of rental income (June, July, August)	\$6,450.00
2/3 utilities for duration of the tenancy	\$697.69

Replacement smoke detectors, closet door, and other damaged items	\$438.20
Replacement stacking laundry unit	\$1,619.68
Repair to drywall	\$1,785.00
Cleaning	\$320.00
Outdoor labour and garbage removal	\$420.00
Filing fee	\$100.00
Less security deposit	-\$1,575.00
Total Monetary Order	\$10,155.57

I issue a monetary order in the landlords' favour in the amount of **\$10,155.57**. The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided.

Dated: August 18, 2017

Residential Tenancy Branch