



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MT, FF
Landlord: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and the recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession, a Monetary Order for unpaid rent and the recovery of the filing fee, and the retention of the security deposit paid by the Tenants to offset any Monetary Orders awarded to them.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord's Application. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified in the hearing that the Application, the Notice of Hearing, and their evidence package were personally served on each of the Tenants in the presence of a witness on September 5, 2017. As a result, I find that the Tenants were served the Application, the Notice of Hearing, and the Landlord's evidence on September 5, 2017, the date the documents were personally served on them.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

In the hearing the Landlord withdrew their request for an Order of Possession as the Landlord testified that the Tenants returned the keys and moved out of the rental unit on September 19, 2017. The Landlord also withdrew their request for a Monetary Order for money owed or compensation for damage or loss, as they are only seeking unpaid rent and the recovery of the filing fee at this time. As a result, the Landlord's application for an Order of Possession for unpaid rent and utilities and a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

In the hearing the Landlord testified that beginning February 1, 2016, and the tenants rented the above named unit at a monthly rent of \$1,600.00, which was payable on the first day of each month. The Landlord testified that the tenancy began as a six month fixed-term tenancy agreement and continued as a month to month tenancy thereafter. The Landlord also testified that a security deposit in the amount of \$800.00 was paid by the Tenants, which they still hold. The Landlord submitted into the documentary evidence before me, a tenancy agreement signed by the Landlord and the Tenants on January 17, 2016, matching the above noted terms.

The Landlord testified that the Tenants failed to pay rent when due on August 1, 2017, and that a 10 Day Notice to End tenancy for Unpaid Rent or Utilities (the "10 day Notice") was subsequently issued on August 28, 2017.

The Landlord testified that since the service of the 10 Day Notice, the Tenants continued to reside in the rental unit and have not paid the rent for either August or September, 2017. The Landlord testified that although the Tenants returned the keys and vacated the rental unit on September 1, 2017, they still failed to pay the rent as required under the *Act* and the tenancy agreement on September 1, 2017.

Analysis

Although the Tenants filed an Application seeking more time to dispute the 10 Day Notice within the five day period, the Tenants did not appear at the hearing to present evidence in support of their Application. As the Landlord, who is the respondent named in the Tenants Application, appeared at the hearing, the Tenants' Application is dismissed without leave to reapply.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were obligated to pay the monthly rent in the amount of \$1,600.00, on time and in full each month, up to and including the month of September, 2017.

Based on the above, I find that the Tenants owe to the Landlord \$3,200.00 in unpaid rent for August and September, 2017. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$800.00 security deposit paid by the Tenants.

As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,500.00; \$3,200.00 in back owed rent for August and September, 2017, plus \$100.00 for the filing fee, less the \$800.00 security deposit held by the Landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,500.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order 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*.

Dated: September 28, 2017

Residential Tenancy Branch