



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 dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 6, 2017 (the "Notice), and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified as to the terms of the tenancy as follows: the tenancy began October 1, 2017; monthly rent was payable in the amount of \$3,200.00; and the Tenants paid a security deposit in the amount of \$1,600.00.

The Landlord's agent testified that the November 2017 rent cheque was returned as N.S.F. and the Tenants also failed to pay rent for the month of December 2017. As a result, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on December 6, 2017 indicating the amount of \$3,250.00 was due as of December 1, 2017 (the "Notice"). The Landlord was authorized by the addendum to the tenancy agreement to charge a \$50.00 N.S.F. fee.

Based on the testimony of the Landlord's Agent, I find that the Tenants were served with the Notice on December 6, 2017 by regular mail. Pursuant to sections 88(c) and 90 of the *Act*, documents served in this manner are deemed served five days later. Accordingly, I find that the Tenants were served with the Notice as of December 11, 2017.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, December 16, 2017. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant, R.G., testified on behalf of the Tenants. She testified that the December 2017 rent was paid on December 19, 2017. Introduced in evidence was a deposit slip showing the sum of \$3,200.00 in cash paid to the Landlord's account. She confirmed that the January 2017 rent was not paid.

The Landlord's Agent replied that although the deposit slip indicates the \$3,200.00 went to the Landlord's account, the Landlord did not receive the cash deposit made on December 19, 2017; he further stated that he was informed that she and her son went to the bank and were informed the deposit slip "could not be verified".

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenants did not pay the outstanding rent or apply to dispute the Notice within the strict timelines mandated by section 46 and are therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Based on the evidence before me, I am unable to determine whether the December 19, 2017 payment of \$3,200.00 was deposited to the Landlord's account/benefit. The Tenants confirmed they would speak to the bank about this payment as while they submitted in evidence a deposit slip, the Landlord's Agent claimed the funds were not received. As such, I grant the Landlord leave to reapply for monetary compensation for the December 2017 rent.

I find that the Landlord has established a total monetary claim of \$3,450.00 comprised of \$150.00 in N.S.F. fees for November 2017, December 2017 and January 2018, \$3,200.00 in unpaid rent for January 2018 and the \$100.00 fee paid by the Landlord for this application.

I grant the Landlord an Order under section 67 for \$3,450.00 . This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy within five days of deemed service of the Notice.

The Landlord is granted an Order of Possession, and is granted a Monetary Order for \$3,450.00.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 22, 2018

Residential Tenancy Branch