



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

The landlord applies for a monetary award for unpaid rent and, by amendment, for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent dated February 2, 2018 and for further unpaid rent.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

What is owed for rent, if anything? Has the ten day Notice resulted in an ending of this tenancy entitling the landlord to an order of possession?

Background and Evidence

The rental unit is a three bedroom house. There is a written tenancy agreement. The tenancy started November 1, 2017. The monthly rent is \$2450.00, due on the first of each month in advance. The landlord holds a \$1225.00 security deposit.

The tenants paid only \$2250.00 for the December rent. They claim they were entitled to reduce the rent by \$200.00 for repair work done to a shed on the property. The landlord disputes that claim and says that, in any event, no work was done to the shed.

The tenants refer to an extract of texts between the parties which indicate that the tenants would do work on the shed, that the cost would be under \$200.00 and that at completion the parties could either deduct it from rent or the landlord could e-transfer funds to the tenants.

The landlord says the tenants failed to pay February 2018 rent. The tenant Mr. C. says he paid it by cash and got a receipt.

Analysis

The arrangement between the parties evinced by the tenants' text extracts do not form the basis for them withholding or reducing the December rent. The amount for the work was still to be determined. It was to be less than \$200.00. The parties were still to agree on how compensation was to be paid: rent reduction or e-transfer.

The tenants were not entitled to simply reduce the December rent by \$200.00 and so they still owe \$200.00 for December rent.

The tenants have not proved that February 2018 rent was paid. The onus of proof of a debt lies with the debtor: the tenants in the case of rent. If they have a rent receipt it should have been submitted as evidence. In the face of the landlord's denial of receipt of any rent, the tenants have not satisfied the burden of proof and I find the rent for February was not paid.

The ten day Notice was served on the tenants by registered mail (tracking number reproduced on the copy of the Notice filed by the landlord). Canada Post records show that the item was mailed February 2, 2018 and ultimately collected by the tenants on February 20.

Section 80 of the *Residential Tenancy Act* (the "*Act*") provides that a mailing is deemed to have been received five days later and so the tenants were deemed to have received the ten day Notice on February 7. They have failed to apply to dispute the Notice within five days after February 7 or within five days after actual receipt on February 20.

Section 46 of the *Act* provides that where a tenant fails to pay the rent or make an application to dispute a ten day Notice within five days, the tenant is conclusively deemed to have accepted the ending of the tenancy. That is the case here.

This tenancy ended on February 18, 2018 and the landlord is entitled to an order of possession.

The landlord is entitled to a monetary award of \$2650.00 plus recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is allowed. There will be an order of possession.

The landlord expressed some hesitancy about my suggestion that the \$1225.00 security deposit be offset at this time against the award. I therefore grant the landlord a monetary order against the tenants, jointly and severally for the full award of \$2750.00 and recommend to the parties that they inform themselves about a landlord and a tenant's right to set off the deposit money against an award.

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: March 15, 2018

Residential Tenancy Branch