



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On August 13, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding documents on August 22, 2018, using registered mail. The Landlord testified that the registered mail was sent to the dispute address and was returned to him as unclaimed. The Landlord testified that the Tenants moved out of the rental unit at the end of August; or early September.

I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Residential Tenancy Act (“the Act”).

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2016, as a one year fixed term tenancy to continue thereafter on a month to month basis. Rent in the amount of \$1,350.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$675.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of August 2018.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2018, ("the 10 Day Notice"). The 10 Day Notice indicates that Tenants owes \$1,350.00 that was due on August 1, 2018.

The Landlord testified that the Tenants were served the 10 Day Notice in person on August 2, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that that the Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice and has not paid any of the rent owing for August 2018.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,350.00

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the rent within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. Since the Tenants have moved out of the rental unit, the Landlord waived his right to receive the order of possession.

I find that the Tenants have failed to pay the rent due under the tenancy agreement for the month of August 2018. I find that the Tenants owe the Landlord \$1,350.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,450.00 comprised of \$1,350.00 in unpaid rent for August 2018, and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$1,450.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,450.00.

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: October 09, 2018

Residential Tenancy Branch