



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FFL

Introduction

On September 10, 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; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords 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 on September 14, 2018, using registered mail. The Landlords provided the registered mail tracking information as proof of service.

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 *Act*.

The Landlords were 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 keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords testified that the tenancy began on May 11, 2018, as a one year fixed term tenancy. Rent in the amount of \$2,200.00 is to be paid to the Landlord by the first

day of each month. The Tenants paid the Landlord a security deposit of \$1,100.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants have failed to pay all the rent owing under the tenancy agreement.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2018, ("the 10 Day Notice"). The Landlord testified that the Tenant Ms. K.D. was served with the 10 Day Notice in person at the rental unit on September 2, 2018.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$7,350.00 which was due on September 1, 2018. The 10 Day 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 Tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice.

The Landlord seeks an order of possession and a monetary order for unpaid rent.

The Landlord testified that the Tenants have failed to pay the rent in the amount of \$9,550.00 as follows:

- June 2018 \$750.00
- July 2018 \$2,200.00
- August 2018 \$2,200.00
- September 2018 \$2,200.00
- October 2018 \$2,200.00

The Landlord requested to include the claim for unpaid October 2018, rent.

The Landlord is seeking to keep the security deposit of \$1,100.00 in partial satisfaction of the claim for unpaid rent.

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 outstanding 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 Landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlord \$9,550.00 in unpaid rent for the above noted months.

I have permitted the Landlord to amend the application to include unpaid October 2018, rent. The Tenants are still living in the rental unit and they know that the tenancy agreement requires them to pay the rent each month. The Landlords have suffered a loss of October 2018, rent.

I order that the Landlord can keep the security deposit in the amount of \$1,100.00 in partial satisfaction of the claim 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 Landlords paid to make application for dispute resolution.

I find that the Landlords has established a total monetary claim of \$9,650.00 comprised of unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlords for this hearing.

After setting off the security deposit of \$1,100.00 towards the claim of \$9,650.00, I find that the Landlords are entitled to a monetary order in the amount of \$8,550.00. 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.

I order that the Landlord can keep the security deposit in the amount of \$1,100.00 in partial satisfaction of the claim for unpaid rent.

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$8,550.00.

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 26, 2018

Residential Tenancy Branch