



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with an agent, and both gave affirmed testimony. However, the line remained open while the phone system was monitored for in excess of 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. The landlord's agent testified that the tenants were individually served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on July 27, 2018. The landlord has provided copies of 2 Registered Domestic Customer Receipts stamped with that date by Canada Post, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord advised that there are currently no rental arrears and the landlord withdraws the applications for monetary compensation and to keep the security deposit.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on May 1, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$2,100.00 per month is payable on the 1st day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,050.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenants failed to pay rent when it was due in June, 2018 and on June 7, 2018 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. The Notice was posted to the door of the rental unit by another agent of the landlord who noted the date and time of posting it on the Notice. It is dated June 7, 2018 and contains an effective date of vacancy of June 17, 2018 for unpaid rent in the amount of \$4,200.00 that was due on June 1, 2018.

The landlord has also provided a Statement of Account dated July 13, 2018 showing that rent for May, 2018 was paid on May 22, 2018 and at that time there were no arrears. It also shows that on June 25, 2018 the tenants paid the outstanding arrears of \$2,100.00 for June's rent. The landlord testified that July's rent was paid on August 23 and August's rent was paid on August 24, 2018. Rent for September was paid on time.

The tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and due to the continued late payments of rent, the landlord seeks an Order of Possession.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit.

In this case, although I am not satisfied that \$4,200.00 was owed to the landlord for rent as at June 1, 2018, I am satisfied that the Notice was served on June 7, 2018 by posting it to the door of the rental unit. Documents served in that manner are deemed to have been served 3 days later, or in this case June 10, 2018. The tenants paid the rent but not until

June 25, 2018, which is beyond the 5 days permitted by the *Act*. The landlord testified that the tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep \$100.00 from the security deposit held in trust, or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust or may otherwise recover it.

This order is final and binding and may be enforced.

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 14, 2018

Residential Tenancy Branch