



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an order of possession based on unpaid rent, for a monetary order and to recover the filing fee.

On October 2, 2018, the Adjudicator, ordered that the direct request proceeding be adjourned to a participatory hearing which was scheduled for today, November 30, 2018 at 9:30am.

The landlord and the landlord's counsel attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

Counsel submits that the Application for Dispute Resolution and Notice of Hearing were served by registered mail, sent on October 24, 2018. Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's counsel gave submission on behalf of their client.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Background and Evidence

Counsel submits that the tenants did not pay October 2018, rent on the 1st of the month in the amount of \$1,500.00, as required by their tenancy agreement. Counsel submits the tenants were served with a notice to end tenancy for non-payment of rent on October 2, 2018, by posting to the door of the residence. 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.

Counsel submits that on October 6, 2018, the tenants paid the amount of \$1,450.00, leaving a balance owing of unpaid rent in the amount of \$50.00. Counsel submits the remaining balance of \$50.00 was not paid within the five (5) days as required.

Counsel submits that the tenants paid November 2018, and the outstanding rent was paid on November 6, 2018. Counsel submits that although rent has been paid they are not continuing the tenancy and they spoke with the tenants that the hearing was still proceeding on today's date.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenants did not paid the outstanding rent within the five (5) days 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. 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.

In this case, the tenants' rent has now been paid in full. Therefore, I find it not necessary to consider the landlord's application for a monetary order for unpaid.

I find the landlord is entitled to recover the \$100.00 filing fee paid. I order that the landlord retain the above amount from the security deposit in full satisfaction to recover the cost of the filing fee from the tenants.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep a portion of the security deposit to recover the cost of the filing fee.

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: November 30, 2018

Residential Tenancy Branch