



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On January 22, 2019, the Landlords 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 Landlords attended the teleconference hearing; however, the Tenants did not. The Landlords provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding documents by registered mail sent to each Tenant on January 24, 2019. The Landlord testified that the express mail is registered because it requires a signature and a notification card for the recipient. The Landlord testified that they have tried to engage the tenants on numerous occasions; however the Tenants physically avoid them. The Landlords provided copies of the express mail address labels addressed to the Tenants and the mail receipts as proof of service.

Pursuant to section 71(2) of the Act, I find that the Tenants have been sufficiently served with the Notice of Dispute Resolution Proceeding for the purposes of the Act.

The hearing proceeded and the Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

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

Background and Evidence

The Landlords testified that the tenancy began in approximately June 2017 and is on a month to month basis. The Tenants rent a room in a house that contains other occupants who also rent rooms under separate tenancy agreements. Rent in the amount of \$900.00 is to be paid to the Landlord by the twentieth day of each month. The Tenants paid the Landlords a security deposit in the amount of \$450.00. The Landlord testified that the tenancy agreement is an oral agreement and was not put in writing.

The Landlords testified that the Tenants have not paid the rent owing under the tenancy agreement since June 2018. The Landlord testified that the Tenants were paying the rent until June 2018, when they informed him that they would pay the rent as soon as possible. The Landlord testified that the Tenants have not paid the rent since June 2018. The Landlord testified that as of January 4, 2019, the Tenants owe \$7,200.00 for eight months of unpaid rent.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2019, ("the 10 Day Notice"). The Landlord testified that the Tenants were served with the 10 Day Notice by registered mail sent to them on January 4, 2019. The Landlords provided a copy of an express post mail receipt and envelope addressed to the Tenants and dated January 4, 2019, as proof of service. The Landlords testified that at an earlier hearing, the Tenants denied that they were served with a 10 Day Notice so the Landlord decided to serve the 10 Day Notice using registered mail.

The Landlord provided a copy of the 10 Day Notice after the completion of the hearing. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$6,300.00 which was due on December 20, 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.

The Landlord seeks an order of possession of the rental unit and a monetary order for unpaid rent in the amount of \$7,200.00.

Analysis

I accept the Landlord's affirmed testimony that the Tenants are avoiding any direct contact with the Landlord, making personal service of documents difficult. I accept the

Landlords affirmed testimony that the Tenants have not paid the rent owing under the tenancy agreement since June 2018. I find that the 10 Day Notice served by express post meets the requirements of registered mail in accordance with section 89 of the Act. In accordance with section 90 of the Act, I find that the Tenants are deemed served with the 10 Day Notice on January 9, 2019, the fifth day after it was mailed.

I find that the Tenants have not paid the rent owing under the tenancy agreement 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.

Since the effective date of the 10 Day Notice has passed, 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 Tenant.

I find that the Tenants owe the Landlords \$7,200.00 for unpaid rent for eight months from June 2018, until January 2019.

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 grant the Landlords a monetary order of \$7,300.00 comprised of \$7,200.00 in unpaid rent for the above mentioned months and the \$100.00 fee paid by the Landlord for this hearing. 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 or attend the hearing. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlords are granted an order of possession effective two (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 \$7,300.00.

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: March 07, 2019

Residential Tenancy Branch