



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XVI LP c/o METCAP LIVING MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FFL

Introduction

On February 24,, 2021, 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 a security deposit; for money owed or compensation for damage or loss, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenants did not. The line remained open while the phone system was monitored for 12 minutes and the Tenants did not call into the hearing during this time.

The Landlord provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding using registered mail sent to the dispute address on March 8, 2021. The Landlord provided copies of the registered mail receipts and tracking numbers.

I find that the Tenants were duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The hearing proceeded and the Landlord was provided the opportunity to present her 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 money owed or compensation for damage or loss?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2021 as a one-year fixed term tenancy. Rent in the amount of \$3,043.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,521.50.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for the month of February 2021.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 8, 2021, ("the 10 Day Notice"). The Landlord testified that the Tenants were served with the 10 Day Notice using mail sent to them on February 8, 2021. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$3,082.00 which was due on February 8, 2021. 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 the Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenants paid the Landlord \$1,720.00 on March 1, 2021 and \$1,500.00 on March 15, 2021.

The Landlord is seeking a monetary order for unpaid February 2021; April 2021; and May 2021 rent. The Landlord testified that the Tenants are still living in the rental unit and are not paying the rent. The Landlord is seeking a monetary order of \$9,129.00 for these three months.

The Landlord testified that the Tenants are also required to pay a storage locker fee of \$20.00 each month. The Landlord is seeking \$60.00 for unpaid storage fees for February 2021; April 2021; and May 2021. The Landlord provided a copy of the storage agreement.

The Landlord applied to keep the security deposit of \$1,521.50 towards the unpaid rent.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent and unpaid storage locker fees in the amount of \$9,189.00.

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 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.

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.

I find that the Tenant owes the Landlord \$9,129.00 in unpaid rent and \$60.00 for storage locker fees. I order that the Landlord can keep the security deposit in the amount of \$1,521.50. in partial satisfaction of the award 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 \$9,289.00 comprised of \$9,189.00 in unpaid rent and fees for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$1,521.50. towards the award of \$9,289.00, I find that the Landlord is entitled to a monetary order in the amount of \$7,767.50. 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 pay the rent owing within 5 days or file to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I order that the Landlord can keep the security deposit in the amount of \$1,521.50 in partial satisfaction of the award for unpaid rent.

The Landlord is granted an order of possession effective two (2) days after service on the Tenants and I grant a monetary order for the unpaid rent, fees, and the cost of the filing fee in the amount of \$7,767.50.

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: May 21, 2021

Residential Tenancy Branch