



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants.

The landlord and the tenant CH appeared and were provided the opportunity to present their evidence orally and in written and documentary form. The tenant HD did not appear.

The landlord testified that they served with the Application for Dispute Resolution and Notice of Hearing, by registered mail on both tenants and also sent copies to each of them by email. Canada post tracking numbers were provided as evidence of service. I find that the tenants have been duly served in accordance with the Act.

On February 21, 2023, the Director determined that this matter should be brought forward to today's date March 15, 2023 at 9:30am, from the original hearing date scheduled on April 4, 2023, due to the nature of the application. All parties were notified by the Residential Tenancy Branch of this change verbally and in writing. Only HD chose not to attend the hearing.

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

The tenancy began on April 1, 2017. Current rent in the amount of \$3,450.00.00 was payable on the first of each month. A security deposit of \$1,725.00 and a pet damage deposit of \$275.00 were paid by the tenants.

The landlord testified that the tenants have not paid any rent since April 1, 2022. The landlord stated that they issued the Notice on November 15, 2022, and served the Notice on the tenants by posting the Notice to the door, sending a copy by registered mail and by sending a copy by email. Filed in evidence is proof the documents were sent by registered mail.

The landlord testified that the tenants did not pay the rent of \$37,250.00 or any subsequent rent and the total rent owed is \$51,050.00. The landlord stated that only applied for the maximum permitted under the Act of \$35,000.00.

The tenant CH testified that they vacated the premises three years earlier. CH stated that their ex-partner HD remained in the premises and that they continued to pay the rent on their behalf. CH stated that they could no longer afford to pay their own mortgage and the rent. CH stated that they did not notify the landlord they had vacated the rental unit and did not give notice to end the tenancy which was an oversight on their part. CH agrees that the tenancy is to end.

Analysis

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

In this case, CH and DD were co-tenants under the tenancy agreement. While I accept CH vacated the premises at some point; however, CH did not end the tenancy in accordance with the Act, nor did they inform the landlord that they were not living in the rental unit until receiving the Notice. CH was not released from their obligations under the Act or the tenancy agreement.

I find the tenants were served with the Notice by multiple methods permitted by the Act and have not paid the outstanding rent 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. Further, the tenant CH agrees that the tenancy must end.

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 tenants have failed to pay rent in the amount of **\$51,050.00**. However, as the maximum amount permitted to be claim under the Act is \$35,000.00, I find the landlord is entitled to a total monetary claim of **\$35,100.00** comprised of unpaid rent and the \$100.00 fee paid by the landlord for this application. I grant the landlord a formal order pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Should the above monetary order remain unpaid, the landlord may keep the security deposit and pet damage deposit to offset the amount owed, pursuant to section 38(4) of the Act.

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 a monetary order for the unpaid rent and 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: March 15, 2023

Residential Tenancy Branch