



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, for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord's agent and the landlord 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.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on April 19, 2023. The agent stated that the packages were returned unclaimed. Canada post tracking numbers were provided as evidence of service, the tenants did not appear. I have noted them on the covering page of this decision.

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. Refusal or neglect to pick up the packages does not override the deemed served provisions of the Act.

The landlord's agent stated that they also served the tenants with their evidence, served by registered mail sent on April 21, 20223. The agent stated that the packages were again returned unclaimed. I find the tenants were served the landlord's evidence in accordance with the Act. Copies were filed in evidence.

The landlord's agent, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In this case, the landlord is claiming for loss of rent; however, I find that request is premature as the tenancy has not ended. However, I will consider any unpaid rent since they filed their application.

Issues to be Decided

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 1, 2022. Rent in the amount of \$3,500.00 was payable on the first of each month. A security deposit of \$1,750.00 was paid by the tenants.

The landlord's agent testified that the tenants was served on March 30, 2023, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on the same day, by posting to the door of the rental unit. The landlord stated at the time the Notice was issued the tenant had failed to pay the amount of \$14,000.00 in rent. Filed in evidence is a copy of the Notice, and proof of service

The landlord's agent testified that they went back a couple of days later and the Notice had been removed from the door along with a notice of inspection. The agent stated that they could not inspect the premises because the tenants had changed the locks; however, they could still see the tenants' furniture in the rental unit.

The landlord's agent testified that the tenants did not dispute the Notice or pay the outstanding rent within 5 days and have failed to pay rent for April and May 2023 and owes an additional amount of \$7,000.00. The agent stated the current amount of unpaid rent is \$21,000.00.

Analysis

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

Based on the testimony of the landlord's agent, I find that the tenants were served with the Notice on March 30, 2023, by posting to the door. The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice.

The tenants did not pay the outstanding rent and did not apply to dispute the notice and is 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 landlord has established a total monetary claim of \$21,100.00 comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

I order that the landlords retain the security deposit of \$1,750.00 and interest of \$14.02 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of \$19,335.98. This 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.

As the tenants have changed the locks without the authority of the Act, or without the written landlord. I authorize the landlord the authority to have the locks changed immediately, without any notice to the tenants. However, if the tenants are still occupying the rental unit the landlord cannot lock the tenants out.

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 the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 30, 2023

Residential Tenancy Branch