



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 the landlord's Application for Dispute Resolution (the Application) for:

- an Order of Possession for unpaid rent and/or utilities pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities pursuant to section 67 of the Act (\$11,229.00)
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act (\$100.00)

On April 25, 2023, the Adjudicator considered the application and determined that it should be heard by a participatory hearing, which was scheduled for June 6, 2023, at 9:30am. The interim decision should be read in conjunction with this Decision as it made findings of service on the tenants.

On June 6, 2023, only the landlord appeared. I am satisfied that the tenants are fully aware of the hearing as they contact the Residential Tenancy Branch on June 2, 2023, and were also sent a reminder notification of today's hearing.

The parties were also at a previous hearing on June 2, 2023, and the Arbitrator granted the tenants monetary compensation in the amount of \$3,897.98, which was to be deducted from rent owed, which was to be determined at today's hearing. I have noted the previous file number on the covering page of this decision.

The landlords promised to tell the truth and was 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 for unpaid rent?

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on September 15, 2022. Rent in the amount of \$2,700.00 was payable on the 15th of each month. A security deposit of \$1,350.00 was paid by the tenants.

The landlord testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on February 13, 2023, by posting to the door of the rental unit, for failure to pay rent in the amount of \$11,229.00, and failure to pay utilities in the amount of \$2,585.35.

The landlord testified that all rent for October 2022 was not paid as there was an outstanding balance of \$429.00 and the tenants have not paid any subsequent rent for November, December 2022, January, February, March, April, and May 2023.

The landlords testified that the tenants are currently in the process of stealing their furniture and other items and have filed a police report. The landlord asked what the Residential Tenancy Branch can do to assist.

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 landlords, I find that the tenants were served with the Notice on February 13, 2023, by posting to the door. 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.

The tenants 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.

I find that the landlords are 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 the tenants breach the Act when they failed to pay rent for the above stated months in the amount of **\$19,329.00**.

I find the tenants breached the Act, when they failed to pay utilities as stated in the Notice of **\$2,585.35**.

I find that the landlords have established a total monetary claim of **\$22,014.35** comprised of unpaid rent, unpaid utilities and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$1,350.00 in partial satisfaction of the claim. As the previous Arbitrator determined the tenants are owed \$3,897.00 and is to be deducted from the rent owed, I have deducted that amount owed in full satisfaction of the tenants' claim. I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$16,767.35**. 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.

I Order the tenants that they must not remove any items from the rental unit or premises to which they do not own. Any items removed must be immediately returned. If the tenants fail to comply with my Order they could be subject to an administrative penalty up to \$5,000.00 per day for failure to comply with my Order.

I also find it appropriate to grant the landlords a substituted service order that any future application for damages arising from this tenancy may be served by email on the tenants. The tenants provided email address of service in their previous application. I have noted their email address on the covering page of this Decision. The landlord are

to file a copy of this Decision to show I have granted them permission to serve the tenants by email.

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 landlords are granted an order of possession and may keep the security deposit in partial satisfaction of the claim and the previous amount award to the tenants has been deducted from the amount owed. I grant a monetary order for the balance due.

The tenants must comply with my order by returning any items they have removed from the rental unit or be subject to an investigation and administrative penalties could be applied.

The landlords are granted a substituted service order for any future application relating to this tenancy.

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: June 06, 2023

Residential Tenancy Branch