



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the male Landlord to the Tenant at the rental unit on June 15, 2011.

The Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenants, despite being served notice of the hearing in accordance with section 89 of the Residential Tenancy Act (*Act*).

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The Landlords testified that they entered into a month to month tenancy agreement for the monthly rent of \$1,300.00 that is payable on the first of each month. It is displayed on the tenancy agreement as \$800\500.00 because the two Tenants were in receipt of income assistance and needed to the rent split. They received two payments towards the security deposit of \$400.00 and \$250.00 totaling \$650.00 on January 15, 2011.

They advised that the Tenants are repeatedly late in paying their rent and when they failed to June 1, 2011 rent the Landlords issued another 10 Day Notice on June 2, 2011 and posted it to the Tenants' door. After posting the notice the male Landlord and his

contractor were conducting repairs on the irrigation system and witnessed the male Tenant remove the 10 Day Notice and crumple it up and threw it away.

When they delivered the hearing package to the Tenants on June 15, 2011 the female Tenant paid them \$500.00 towards the June 2011 rent which leaves a balance owing of \$800.00 for June. The Tenants have not paid anything towards July 1, 2011 rent which leaves an accumulated balance due of \$2,100.00 (\$800.00 + 1300.00) for unpaid rent. As per the 10 Day Notice there is an outstanding balance of \$150.00 for unpaid utilities that remains unpaid.

The Landlords are seeking an Order of Possession for as soon as possible and a monetary order for the rent, utilities, and the filing fee.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

Order of Possession. I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent or the utilities in full within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

As per the above, I approve the Landlords' request for an Order of Possession.

Claim for unpaid rent and utilities. The Landlord claims for unpaid rent of \$2,100.00 which is comprised of \$800.00 owing for June 2011 and \$1,300.00 for July 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

The tenancy agreement provides that the Tenants are responsible for 50% of the cost of utilities. The 10 Day Notice supports the Landlords' demand for payment of the utilities in the amount of \$150.00.

I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month and the Tenants are required to pay 50% of the utilities. Therefore I find the Landlords have proven the test for damage or loss under the Act and I hereby approve their claim of **\$2,250.00** (\$2,100.00 rent + \$150.00 utilities).

The Landlords have been successful with their application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served on the Tenants.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,300.00** (\$2,250.00 + 50.00). This Order is legally binding and must be served on the Tenants.

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: July 05, 2011.

Residential Tenancy Branch