



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession for unpaid rent, for a Monetary Order to recover unpaid rent, for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenants on August 17, 2011. The tenants are deemed to have received the hearing documents on the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

The landlord's and the male tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on January 01, 2010. This started as a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,200.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$600.00 on December 27, 2009.

The landlords testify that the tenants only paid \$400.00 towards rent for August, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 09, 2011. This was handed to one of the tenant's in person. This Notice states that the tenants owe rent for August, 2011 of \$800.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 19, 2011. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have not paid rent for September 2011.

The landlords seek to recover the sum of \$2,000.00 in unpaid rent. The landlords also seek an Order of Possession to take effect as soon as possible.

The landlords testify that the tenants incurred strata fines on two occasions. The first letter concerning items left in the tenants parking bay was sent to the tenants in February, 2011. The landlord's testify that the tenants did not pay the fine of \$50.00 or remove the items left in the parking bay. Another letter was sent to the tenants concerning this in July and another fine was issued to the landlords of \$50.00. The landlord's seek to recover the sum of \$100.00 from the tenants for these fines. The landlord's testify that the tenants were made aware of the strata rules concerning items stored or left in the parking bays.

The tenant attending does not dispute that they owe rent to the landlord for August and September, 2011. The tenant states he moved from the rental unit on August 15, 2011 and agrees he did not notify the landlord of this. He states his mother has continued to live in the unit and cannot afford to pay the rent as she is on disability payments. The tenant testifies he asked the landlord in August if he could pay him \$400.00 and the remainder of the rent could be taken from the security deposit and they would then move out at the end of

August, 2011. He states the landlords agreed but then after collecting the \$400.00 they served them with the 10 Day Notice to End Tenancy.

The tenant testifies he does not have the money to pay the strata fines of \$100.00 and neither does his mother. The tenant states the landlord may use the dispute address as his address for service of any documents to him as his mother continues to reside in the unit and he will collect his mail from there.

Analysis

I refer the parties to #13 of the Residential Tenancy Policy Guidelines which states, in part, Where co-tenants have entered into a tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement have been legally ended. It also states: Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants.

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. Both parties agree that rent is due on the first day of each month and the tenant agrees that they owe rent for August and September, 2011. Consequently, I find that the landlord is entitled to recover rent arrears of **\$2000.00** pursuant to s. 67 of the *Act*.

I further find the landlord has established their claim of **\$100.00** in fines levied by the strata council because the tenants failed to remove belongings from their parking bay. The landlords will also receive a Monetary Order to recover this sum pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay

the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlords have been largely successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

I Order the landlords to keep the tenants security deposit of **\$600.00** pursuant to section 38 (4)(b) of the *Act*. This sum will be used to offset against a portion of the unpaid rent. The landlords will receive a Monetary Order for the following amount:

Unpaid rent	\$2,000.00
Strata fines	\$100.00
Subtotal	\$2,100.00
Plus filing fee	\$50.00
Less security deposit	(-\$600.00)
Total amount due to the landlords	\$1,550.00

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: September 16, 2011.

Residential Tenancy Branch