



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and money owed or compensation for damage or loss, and to recover the filing fee.

The landlord testified that she served each tenant the Application for Dispute Resolution and Notice of Hearing by personal delivery on January 24, 2012; however neither tenant appeared at the hearing. The landlord's agent, through her testimony, successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenants' absence.

The landlord's agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form prior, and make submissions to me.

The landlord's agent advised at the outset of the hearing that the tenants vacated the rental unit and that the landlord no longer required an Order of Possession. As a result, I have amended their Application to exclude a request for such order.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on October 1, 2011, is set to end on September 30, 2012, monthly rent is \$930.00 and a security deposit of \$465.00 was paid by the tenants at the beginning of the tenancy.

The landlord's agent gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on January 4, 2012, by posting on the door. The Notice stated the amount of unpaid rent

was \$930.00. Documents served in this manner are deemed served three days later under section 90 of the Act. Thus the effective vacancy date of January 14, 2012, is automatically corrected to January 17, 2012.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

I have no evidence before me that the tenants applied to dispute the Notice. The landlord provided evidence and gave affirmed testimony that the tenants have not made any rent payments since issuance of the Notice and currently owe \$1,860.00 for unpaid rent for January and February, 2012. The landlord is also seeking a late fee of \$20.00 each for January and February, 2012.

The landlord's relevant evidence included the tenancy agreement, the Notice and a tenant ledger sheet.

Analysis

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

I accept the uncontradicted evidence of the landlord that the tenants owed rent for January and February, 2012, under the Act and tenancy agreement, and did not pay. I therefore find that the tenants owe unpaid rent to the landlord for January and February, in the amount of \$1,860.00.

I reject the landlord's claim for a fee of \$20.00 for late payment of rent for January and February, 2012. A review of the tenancy agreement shows that late payments of rent by the tenants were subject to a charge of \$20.00. However, as the tenants never made any payment, I find they are not subject to the late payment fee provision of the tenancy agreement.

Conclusion

I find that the landlord has established a total monetary claim of **\$1,910.00** comprised of outstanding rent of **\$1,860.00** for January and February, 2012, and the **\$50.00** fee paid by the landlord for this application.

I grant the landlord a monetary order pursuant to section 67 of the Act for **\$1,910.00**.

I am enclosing a monetary order for **\$1,910.00** with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) for enforcement should the tenants fail to comply with the monetary order.

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: February 14, 2012.

Residential Tenancy Branch