



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for cause and a Monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that each Tenant was served with notice of the Dispute Resolution Hearing documents by registered mail on September 13, 2012. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant was sufficiently served Notice of this proceeding, in accordance with the Act, and I proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement, the 1 Month Notice to end tenancy for cause dated August 8, 2012, various Canada Post receipts, and a tenant ledger.

The parties entered into a fixed term tenancy agreement that began on July 1, 2011 which switched to a month to month tenancy after June 30, 2012. Rent is payable on the first of each month in the amount of \$1,395.00 and on June 17, 2011 the Tenant paid \$697.50 as the security deposit.

The Landlord affirmed that on August 7, 2012 he sent each Tenant a registered letter with the 1 Month Notice for repeated late payment of rent. The Tenants ignored the delivery notices and the registered mail was returned unclaimed. The Landlord had contact with the female Tenant after he received the registered mail back and he e-mailed her a copy of the Notice.

The Landlord stated that the Tenants had informed him they were moving out and scheduled a condition inspection for September 30, 2012 at 1:00 p.m. However on that

date at 11:33 a.m. they sent him a text message asking to postpone the inspection to today at 1:00 p.m. Then just seconds before the 10:30 hearing today he received another text message asking to postpone the inspection again.

The Landlord submitted that rent for September was not paid and as per the tenant ledger provided in evidence the Tenants have an accumulated balance due of \$1,805.00. They are seeking a Monetary Order for the unpaid rent to September 30, 2012 and an Order of Possession.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his evidence.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Case law has established that refusal to pick up registered mail does not negate service of documents. That being said, the Tenants in this case were also sent a copy of the Notice by e-mail and they still did not make an application to dispute the Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date. Accordingly, I award the Landlord an Order of Possession.

Claim for unpaid rent - The Landlord claims for accumulated unpaid rent of \$1,805.00 up to September 30, 2012, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, 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. Accordingly, I find the Landlord has met the burden of proof and I award them a monetary claim of **\$1,805.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid rent up to September 30, 2012	\$1,805.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,855.00
LESS: Security Deposit \$697.50 + Interest 0.00	<u>-697.50</u>
Offset amount due to the Landlord	<u>\$1,157.50</u>

Conclusion

I HEREBY FIND 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 upon the Tenants.

The Landlord has been awarded a Monetary Order for **\$1,157.50**. This Order is legally binding and must be served upon 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: October 01, 2012.

Residential Tenancy Branch