



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 19, 2012. Mail receipt numbers were provided by the landlord's agent in evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This fixed term tenancy started on August 15, 2012. Rent for this unit is \$1,600.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$800.00 on August 15, 2012.

The landlord's agent testifies that the tenants failed to pay all the rent for September, 2012 leaving an unpaid balance of \$1,125.00. The tenants failed to pay any rent for October, 2012 leaving an unpaid balance of \$2,725.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 08, 2012. This was handed to the tenants in person. This Notice states that the tenants owe rent of \$2,725.00. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 16, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for November 2012 of \$1,600.00. The total amount of outstanding rent is now \$4,325.00.

The landlord also requests an Order to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord requests an Order of Possession to take effect on as soon as possible.

The landlord has provided a copy of the tenancy agreement and a copy of the 10 Day Notice to End Tenancy. Although this evidence was provided late, as the tenants would have had copies of this evidence I have allowed the evidence, as in doing so I do not believe this has prejudiced the tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the tenants have failed to pay rent for September, October and November, 2012 and the landlord is entitled to recover these rent arrears.

Consequently, the landlord will receive a monetary award to the sum of **\$4,325.00** pursuant to s. 67 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenants' security deposit of **\$387.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$4,352.00
Less Security Deposit	(-\$800.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$3,575.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy 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 s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,575.00**. 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 effective 2 days after service upon 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: November 23, 2012.

Residential Tenancy Branch