



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baywest Management Corporation (agent)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's 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 and pet deposit; for a Monetary Order for money owed or compensation for damage 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.

At the outset of the hearing the landlord's agent advised that the tenants have now paid the outstanding rent indicated on the Notice and the landlord therefore withdraws their application for all Monetary Orders and to keep the security deposit.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on August 22, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's 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 for unpaid rent?

Background and Evidence

The landlord's agent (BC) testifies that this tenancy started on March 01 2012 for a fixed term which ended on February 28, 2013. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$850.00 and was increased on June 01, 2013 to \$875.00. The tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 on February 02, 2012.

The landlord's agent (BC) testifies that the tenants failed to pay rent for August, 2013. The rent cheque provided by the tenants was returned due to insufficient funds (NSF). A 10 Day Notice was served upon the tenants on August 07, 2013. This Notice has been provided in evidence and indicates that the tenants must either pay the outstanding rent or file an application to cancel the Notice within five days or the tenancy will end on August 17, 2013. This Notice was posted to the tenants' door.

The landlord's agent (BC) testifies that the tenants failed to pay the outstanding rent within five days. The landlord's agent testifies that the tenants did pay an amount of rent and an NSF fee for the returned August cheque of \$925.00 on August 26, 2013.

As explained at the hearing the landlord is only entitled to charge the tenants a maximum of \$25.00 for any NSF fees. The landlords have actually charged the tenants \$40.00. The landlord's agent concedes that this provides the tenants with a credit on their account. The landlord's agent testifies that the tenants paid rent for September on September 04 and a portion of rent for October of \$700.00 on September 30, 2013.

These amounts were accepted for use and occupancy only. However, the landlord's agent testifies that she has agreed to reinstate the tenancy if the tenants pay the balance of rent owed for October by October 07, 2013. As there is a credit to the tenants account for \$25.00 this leaves an unpaid balance for October of \$150.00.

The landlord requests an Order of Possession be issued for October 08, 2013 in the event the tenants do not pay the balance outstanding. The landlord also seeks to recover the \$50.00 filing fee.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me of the landlords agent.

I refer the parties to s. 26 of the Act which 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.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenants on August 10, 2013, three days after it was posted to the door. The Notice states that the tenants have 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*.

The landlord has agreed to reinstate the tenancy if the tenants pay the outstanding rent for October on October 07, 2013.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord on October 08, 2013. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that the landlord retain this amount from the security deposit of \$425.00 leaving a balance \$375.00 which must be returned to the tenants if the tenancy ends or otherwise dealt with in compliance with section 38 of the *Act*.

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 03, 2013

Residential Tenancy Branch

