



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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on September 27, 2013. The landlord stated the packages were returned unclaimed. The landlord stated the tenants were aware of the package as they had left the notice they received from Canada post in the rental unit when they vacated.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pick up the packages is not grounds for review.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Based on the testimony of the landlord, I find that the tenants were served with a Notice to End Tenancy for non-payment of rent. The tenants have not paid all the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The landlord testified that she went by the rental unit on the effective date of the notice and the tenants were still occupying the rental unit. The landlord stated that the tenants were still occupying the rental unit on October 1, 2013, when rent was due and were occupying the unit until October 5, 2013, when she discovered that the tenants had vacated.

The landlord testified the tenants did not pay any rent for September or October 2013.

Analysis

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

Although the landlord is entitled to an order of possession in these circumstances, the tenants have vacated the rental unit and therefore, an order of possession is no longer required.

I find that the tenants have failed to pay rent under the Act and tenancy agreement.

I find the landlord has established a total monetary claim of **\$1,800.00** comprised of rent owed for September, and October 2013, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$435.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,365.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an order of possession is not required.

The landlord is granted a monetary order for rent due, and may keep the security deposit in partial satisfaction of the claim. The landlord is granted a formal order for the balance due.

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 04, 2013

Residential Tenancy Branch

