



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 a Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlords also applied to keep the Tenants' security deposit and to recover the filing fee for the cost of making the Application.

The Landlords appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlords were also permitted, under Section 11.5 of the *Rules of Procedure*, to provide a copy of the notice to end tenancy after the hearing had concluded. There was no appearance by the Tenants during the 14 minute duration of the hearing and there was no submission of written evidence by the Tenants prior to the hearing. As a result, I focused my attention to the service of the documents by the Landlords.

The Landlord testified that they served each Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on April 17, 2014, pursuant to section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Landlords provided a copy of the Canada Post tracking receipts as evidence for this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, based on the undisputed evidence of the Landlords in relation to the service of the hearing documents, I find that the Tenants were deemed served with the required documents on April 22, 2014 pursuant to the Act.

As a result, I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlords in this decision as follows.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent for April, May and June, 2014 and an April, 2014 late fee?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of their monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on February 1, 2014 for a fixed term due to end on August 31, 2014 and then intended to be continued on a month to month basis. The parties completed a written tenancy agreement and rent was established in the amount of \$1,050.00 payable by the Tenants on the first day of each month. The Tenants paid the Landlord \$525.00 as a security deposit on February 26, 2014.

The Landlord testified that the Tenants failed to pay rent on April 1, 2014. As a result, the Landlords personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 3, 2014. The Notice was provided as evidence for this hearing and shows an expected date of vacancy of April 14, 2014 due to \$1,050.00 in unpaid rent due on April 1, 2014 and a \$25.00 late fee.

The Landlord drew my attention to section 10 of the signed written tenancy agreement titled 'Arrears', which requires the Tenants to pay a late rent fee in the amount of \$25.00. The Landlord testified that within the five day period allowed under the Notice for the Tenants to pay the rent, the Tenants made a \$300.00 payment which left an outstanding balance of **\$750.00** which the Landlord now claims.

The Landlord testified that since the issuing of the Notice to the Tenants and the making of their Application, the Tenants have also failed to pay rent for the months of May and June, 2014 and they now also seek a total amount of **\$2,100.00** in unpaid rent for these two months and the **\$25.00** late fee for April, 2014.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act.

I also accept the Landlords' evidence that the Notice was personally served to the Tenants in accordance with section 88(a) of the Act.

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice and therefore, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenant as the vacancy date of the Notice has now passed.

Based on the written and verbal evidence of the Landlord above and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord is also entitled to unpaid rent in the amount of **\$2,850.00** relating to April, May and June, 2014.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section 10 of the signed written tenancy agreement provided as evidence for the hearing, the Landlords are also entitled to the **\$25.00** late fee claimed for April, 2014 late rent.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover the **\$50.00** Application filing fee pursuant to section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is \$2,925.00.

As the Landlords already hold the Tenants' \$525.00 security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlords are awarded \$2,400.00.

Conclusion

For the reasons set out above, I grant the Landlords an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlords a Monetary Order pursuant to Section 67 of the Residential Tenancy Act in the amount of **\$2,400.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) 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: June 10, 2014

Residential Tenancy Branch

