



Dispute Resolution Services

Page: 1

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 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 deposit; 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*; served in person on August 13, 2014

The tenants and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(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 rent owed?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testified that this month to month tenancy started on December 01, 2001. Rent for this unit is \$1,500.00 per month due on the 1st of each month. The tenants paid a security deposit of \$650.00 on November 20, 2001.

The landlord testified that the tenants failed to pay the rent for April, May, June, July and August, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 29, 2014. This was posted on the tenants' door and was deemed to have been served three days later. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 09, 2014. The tenants did provide a cheque for \$2,800.00 on August 02, 2014; however, this was returned by the bank due to insufficient funds. The total amount of outstanding rent is \$7,500.00.

The landlord has applied to retain the tenant's security deposit and any accrued interest in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant JS testified that they thought they had paid rent for April, 2014 but later agreed that the rent paid was for March, 2014. The tenant JS therefore does not dispute the landlord's claim that there is unpaid rent for the five months from April to August, 2014 of \$7,500.00.

The tenant AS testified that in April, 2014 he had informed the landlord that he had medical issues that prevented him from working. AS testified that he informed the landlord that he could not pay the rent as he did not have a job or any money. AS testified that he did plan on leaving at the end of May as JS and AS are separated. AS testified that the landlord said he could have a cheaper rent of \$1,000.00 if JS left the house and then AS could pay at the lower amount; however, JS would not leave the house

AS testified that he has completed many repairs for the landlord, bought new appliances and painted the house so feels the landlord is not entitled to recover all the rent.

The landlord disputed AS claims. The landlord testified that he did not agree to reduce the rent to \$1,000.00 he only agreed JS could pay a reduced amount and then start to catch up on the rent owed as shown in the letter provided in evidence to the tenants. The landlord testified that the tenant agreed to this arrangement and has signed the letter. The landlord testified that he did not ask the tenants to make any repairs to the property or to paint the house.

AS testified that the rent was originally only \$1,300.00 but the tenants agreed to pay \$1,500.00 over a year ago as the landlord said he could not make any repairs to the unit.

JS testified that AS is simply ranting and agreed that they did not ask the landlord to make any repairs to the property.

Analysis

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

Regardless of whether or not repairs were required to the property the tenants' obligation is to pay the full amount of rent on the day it is due. The female tenant agreed that rent of \$7,500.00 is outstanding. Consequently, I am satisfied that there is outstanding rent April, May, June, July, and August, 2014 of \$7,500.00. It is my decision

that the landlord is entitled to recover the rent arrears and a monetary award has been issued to the landlord pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of \$650.00 plus accrued interest of \$25.34 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.

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

Outstanding rent and parking	\$7,500.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$675.34)
Total amount due to the landlord	\$6,924.66

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. As this Notice was posted on the tenant's door it was deemed served three days after posting on August 01, 2014. 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. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,924.66** pursuant to s. 67 and 72(1) of the *Act*. 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 in favour of the landlord effective **two days** after service on the Respondents. 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: August 27, 2014

Residential Tenancy Branch

