



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and for compensation for loss under the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served both the Tenants with the Notice of Hearing and their Application on February 4, 2015 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of February 9, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Landlord advised that the Tenants moved out on February 14, 2015, as such the Landlord was no longer seeking an Order of Possession.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began October 1, 2014. Monthly rent was payable in the amount of \$1,800.00. A security deposit in the amount of \$900.00 was paid on September 22, 2014.

The Tenants failed to pay rent for the months of December 2014 and January 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$1,800.00.00 was due as of December 1, 2014 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenants were served with the Notice on January 15, 2015 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served five days later. Accordingly, I find that the Tenants were served with the Notice as of January 20, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, January 25, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The Tenants did not file to dispute the Notice.

The Landlord testified that the Tenants also did not pay rent for January 2015 and February 2015 such that a total of \$5,400.00 remained owing for rent. The Landlord also sought recovery of the \$50.00 filing fee for a total of \$5,450.00.

Analysis

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

The Tenants have not paid 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.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of \$5,450.00 comprised of rent for December 2014, January 2015 and February 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$900.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$4,550.00.

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. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

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

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 24, 2015

Residential Tenancy Branch

