



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on July 22, 2016 she forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenants. The landlord provided a Canada Post tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on July 27, 2016, the fifth day after it's registered mailing.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that she wished to amend the landlord's application to increase her monetary claim to include September 2016 unpaid rent of \$650.00. I find that the tenants should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for September 2016 unpaid rent of \$650.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Background and Evidence

As per the testimony of the landlord, the tenancy began on November 1, 2015 on a month-to-month basis. Rent in the amount of \$650.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$325.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") for unpaid rent of \$1,600.00 due on June 1, 2016 was issued to the tenant on June 17, 2016 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of June 27, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were served with the landlord's 10 Day Notice on June 20, 2016, three days after its posting.

The landlord seeks a monetary order of \$3,550.00 for unpaid rent from December 2015 to September 2016. The landlord claimed that the tenants paid a total of \$2,950.00 in rent for the above ten months.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent or file an application to dispute the notice within five days, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that

a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$650.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from December 2015 to September 2016. Therefore, I find that the landlord is entitled to \$3,550.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$325.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,225.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$3,225.00.

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: September 14, 2016

Residential Tenancy Branch