



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On October 3, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and his agent attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution proceeding documents on October 14, 2018, using registered mail. The Landlord provided the registered mail tracking numbers for the mail sent to each Tenant.

I find that the Tenants were duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues 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 unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on July 15, 2017, as a fixed term tenancy to continue until December 31, 2018. Rent in the amount of \$1,400.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$700.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants did not pay the \$1,400.00 rent owing under the tenancy agreement for the month of September 2018. The Landlord testified that the Tenants also owed \$260.00 in arrears from July 2018.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2018, ("the 10 Day Notice").

The Landlord testified that the Tenants were served with the 10 Day Notice by posting the Notice to the Tenant's door on September 2, 2018. The Landlord provided a proof of service document signed by a witness attesting to the service.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$1,660.00 which was due on September 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that that the Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenants did not pay the rent owing within five days of receiving the 10 Day Notice.

The Landlord testified that the Tenants have not paid the \$1,660.00 and have also failed to pay the rent owing under the tenancy agreement for the months of October 2018, and November 2018. The Landlord testified that the Tenants are still living in the rental unit.

The Landlord requested that his application be amended to include a loss of rent for October 2018, and November 2018.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$4,460.00

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice, 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.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants are still living in the rental unit and the Landlord has suffered a loss of rent for October and November 2018. The Tenants are aware that the tenancy agreement requires them to pay the Landlord rent of \$1,400.00 each month; therefore, I permit the Landlord to amend his application to include the unpaid rent for the months of October and November 2018.

I find that the Tenants owe the Landlord \$4,460.00 for unpaid rent for the above mentioned months.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,560.00 comprised of \$4,460.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$4,560.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$4,560.00.

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: November 09, 2018

Residential Tenancy Branch