



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

The tenants applied to set aside a notice to end tenancy for cause, but did not supply a copy of such a notice. The tenants first stated that they did not apply to set aside the notice to end tenancy for unpaid rent which is the subject of the landlord's application, because all of the rent had been paid for the month of March. The tenants later suggested that they had applied to set aside the notice to end tenancy for unpaid rent.

It appears that the tenants may have checked the wrong box on their application for dispute resolution. I am treating their application as one disputing the notice to end tenancy for unpaid rent as they were unclear as to the nature of their application or the notice. Further there is no evidence that they were served with a notice to end tenancy for cause.

Issues to be Decided

Should the notice to end tenancy be set aside?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenants are obligated to pay \$1,500.00 per month in rent in advance on the first day of each month. The parties further agreed that either in December 2010 or January 2011 the tenants failed to pay \$400.00 of their rent and that this amount remains in arrears. The parties further agreed that on March 7 the tenants were served with a 10 day notice to end tenancy for unpaid rent.

The tenants argued that their rent for March was paid in full and that they had an agreement in place with the landlord whereby they would pay the arrears over a period of time. The landlord agreed that he had agreed that the tenants could have time to pay, but stated that the time to pay expired on March 1, 2011.

Analysis

In order to establish his claim for an order of possession based on unpaid rent, the landlord must prove that rent was in arrears at the time the notice to end tenancy was served. Although the tenants insist that rent for March was paid, they have acknowledged that there were \$400.00 in arrears. I accept that there was an agreement in place whereby the landlord agreed to wait for payment, but I do not accept that the landlord agreed to wait indefinitely.

Additionally, the tenants acknowledged having received the notice to end tenancy on March 7 but did not dispute that notice within the 5 day time frame provided under the Act despite that deadline having been clearly stated on the notice. Section 46(5) of the Act provides that a tenant who does not dispute a notice to end tenancy or pay the arrears within 5 days of receipt of the notice is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenants did not apply for an extension of time in which to make their application to dispute the notice.

I find that the landlord has grounds to end the tenancy and accordingly I dismiss the tenants' application and grant the landlord an order of possession. The tenants must be served with the order of possession. If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

I find that the tenants currently owe \$400.00 in arrears and \$1,500.00 in rent for April. I award the landlord \$1,900.00 in rent and lost income. The landlord is also entitled to recover the filing fee paid to bring his application and I award him \$50.00. I dismiss the landlord's claim for \$50.00 in late payment fees as he has not proven there is a term in the tenancy agreement which permits him to charge such fees.

Conclusion

The tenants' claim is dismissed. The landlord is granted an order of possession and a monetary order for \$1,950.00.

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: April 07, 2011

Residential Tenancy Branch