



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlord: OPR, MNR, FF
For the Tenant: O

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenants applied to dispute the amount listed as unpaid rent.

The landlord applied for a monetary order for unpaid rent, an order of possession due to unpaid rent and to recover the filing fee.

The landlord and the female tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At the outset, I inquired of the landlord as to the amendment of his application, which had originally listed only tenant PS. The landlord stated he had amended his application to include all three tenants listed on the tenants' application, even though this was not placed in the file. The tenant acknowledged that the application served upon her contained all three tenant names.

The tenant further confirmed receipt of the 10 Day Notice and the Notice of Hearing, and that the other two tenants had been delivered both sets of documents.

Thus, the landlord successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") for all parties and the hearing proceeded in the absence of the other two tenants.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief and for an order of possession?

Are the tenants entitled to an order cancelling the notice to end tenancy for unpaid rent and to have the amount listed as unpaid rent clarified?

Background and Evidence

According to the tenancy agreement entered into evidence, this month to month tenancy between the landlord and the tenants began on February 1, 2011, monthly rent is \$1,650.00, payable on the first day of each month and the tenants have not yet paid a security deposit. The tenancy agreement also states that the tenants were to pay \$500.00 for January 2011.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to support the Notice to End Tenancy.

The landlord gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 3, 2011, by posting on the door. The Notice stated the amount of unpaid rent was \$4,700.00 and the stated effective move out date was listed as June 13, 2011. The Act states that a document delivered by posting on the door is deemed served three days later. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to June 16, 2011.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice. The tenants disputed this Notice within the five days allowed.

The landlord stated that he bought the rental unit, with his legal ownership beginning on December 31, 2010. The rental unit needed repairs and renovations, which were completed by the end of January 2011, which is why the rent was reduced to \$500.00 for January 2011.

The landlord testified that since the beginning of the tenancy, the tenants' payments were \$1,650.00 in February, \$1,400.00 in March, 0 in April, \$1,000.00 in May, and 0 in June, leaving a total of \$4,700.00 owed, including the unpaid rent of \$500.00 for January 2011.

The tenant stated that she understood that the tenants had made two payments of \$1,650.00 in February 2011, and is therefore disputing that the tenants owed the amount claimed by the landlord. However, I note the tenant could supply no evidence of the payment and acknowledged that no payments were made in April and June 2011.

Analysis

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

Landlord's Application

Under section 26 of the Act, the tenants are required to pay rent in accordance with the terms of the tenancy agreement and are not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from a dispute resolution officer or expenditures incurred to make an "emergency repair," as defined by the Act. The tenants have not met these criteria.

Where tenants fail to pay rent when due, the landlord may serve the tenants with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenants must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within five days. Where a Notice is disputed, the tenants must be able to show that they do not owe the landlord rent nor had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the tenants owed the landlord the amount of rent listed when the Notice was issued, that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice and the tenants did not establish that they had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit. The landlord is provided with an Order of Possession effective **2 days** after service on the tenants.

This order is a **final, legally binding order**, and may be filed in the Supreme Court should the tenants fail to comply with this order of possession.

I find that the landlord has established a total monetary claim of **\$4,750.00** comprised of outstanding rent of **\$4,700.00** and the **\$50.00** fee paid by the landlord for this application.

I grant the landlord a monetary order in the amount of \$4,750.00. I am enclosing a monetary order for \$4,750.00 with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this monetary order.

Tenants' Application

As I have upheld the landlord's Notice to End Tenancy for Unpaid Rent for the foregoing reasons, I **dismiss** the tenants' application in its entirety, without leave to reapply.

Conclusion

The landlord is granted an Order of Possession and a monetary order in the amount of **\$4,750.00.**

The tenants' application is dismissed without leave to reapply.

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: June 30, 2011.

Residential Tenancy Branch