



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, a monetary order for unpaid rent and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, respond each to the other and make submissions to me.

As a **preliminary issue**, the female tenant informed me at the start of the hearing that the parties have been in numerous dispute resolution hearings before this date. The tenant alleged that each tenant listed was responsible for payment of rent in the amount of \$400.00. The tenant further claimed that they tenants listed were not jointly responsible for the entire rent due, as decided in previous dispute resolution hearings. A search of the records reveals that the parties have had at least 4 prior dispute resolution hearings and 2 review applications.

Issue(s) to be Decided

Have the tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The evidence showed that the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the tenants on November 2, 2011, via personal delivery, with an effective move out date not listed.

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.

I have no evidence before me that the tenants applied to dispute the Notice.

The landlord testified that, as per the shelter information document he entered into evidence, the tenants were responsible for paying total monthly rent in the amount of

\$1,200.00, not \$400.00 each. The landlord has no written tenancy agreement with the tenants.

The landlord further stated that the tenants were deficient in rent for November 2011, in the amount of \$400.00, as listed on the Notice. The landlord also listed \$200.00 as the approximate amount of unpaid utilities.

The landlord acknowledged that he had received payments of \$400.00 each from the listed tenants, but contended that the tenants were responsible for the shortfall of \$400.00.

The tenants submitted that in a prior dispute resolution Decision, the tenants in this residential property were declared to be tenants in common and not joint tenants and that monthly rent from each tenant was \$400.00. Due to this Decision, the tenants stated that their portion of the rent had been paid in full as their \$400.00 had been paid.

Tenant TM further testified he had never been given a notice for utilities.

As to the results of the previous dispute resolution hearings, there were separate Decisions relating to the dispute as to whether or not the tenants were tenants in common or joint tenants. In the most recent Decision dealing with this issue, dated December 23, 2010, #763868, a Dispute Resolution Officer in his Decision made several key findings, primarily finding that the tenants were tenants in common and not joint tenants.

Among other things, the Dispute Resolution Officer deemed that the tenants in the residential property owed \$400.00 each per month.

Analysis

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

I have reviewed all 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.

On applications seeking enforcement of a Notice, the onus is on the landlord to prove, on a balance of probabilities, that the reason listed on the Notice was valid.

The issue of the rent obligation of each tenant was established in a previous dispute resolution Decision, as the DRO found that the tenants were tenants in common, not joint tenants, and their rental obligation was \$400.00 per tenant per month. Due to the legal principle of res judicata, I am bound by this earlier Decision and I cannot re-decide these issues.

The landlord acknowledged that each listed tenant paid, or rather, \$400.00 in rent was paid, on their behalf for the month of November.

I therefore find that at the time the Notice was issued by the landlord, the listed tenants did not owe rent in any amount as each of their \$400.00 payments had been made.

As to the matter of the alleged unpaid utilities listed on the Notice, the Act states that a landlord may serve a Notice to End Tenancy and treat unpaid utility charges as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them. I find that the landlord has failed to establish either of these requirements

I therefore find that the 10 Day Notice to End Tenancy, dated and issued by the landlord on November 2, 2011, is without merit and I order that it be cancelled and this tenancy continues until it may otherwise end under the Act.

As I have found the tenants did not owe rent, I **dismiss** the landlord's claim for \$400.00. I also decline to award the landlord recovery of the filing fee.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2011, is cancelled.

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: December 02, 2011.

Residential Tenancy Branch