



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent and authorization to retain all or part of the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to compensation for unpaid rent?
3. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

Starting September 1, 2009 a tenancy commenced with the female tenant and starting September 1, 2011 a co-tenancy commenced with both named tenants. The tenants are currently required to pay subsidized rent in the amount of \$663.00, including cable, on the 1st day of every month. The landlord is in possession of a \$566.00 security deposit.

On April 2, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice indicates \$379.00 in rent was outstanding as of April 1, 2012 and has a stated effective date of April 12, 2012. The tenants did not pay the outstanding rent or file to dispute the Notice.

The landlord is seeking to recover the outstanding rent of \$379.00 and the filing fee paid for this application.

The tenants submitted that rent has not been paid, in part, due to financial and health issues. The male tenant also submitted that the co-tenancy agreement commenced

September 1, 2011 due to threats from the landlord that the female tenant would be found in breach of her tenancy agreement if the male tenant did not become a tenant of the rental unit. The male tenant submitted that starting the co-tenancy on September 1, 2011 caused financial hardship as he had been living elsewhere and had paid rent elsewhere for September 2011. The tenant did not provide documentary evidence in support of his position.

The landlord responded by reading from the tenancy application that the tenants signed in August 2011. On the application the male tenant indicated he was already residing at the rental unit. The landlord submitted the co-tenancy agreement was signed by the tenants at their own free will.

The tenant also submitted that he had delivered a cheque for the outstanding rent to the landlord's office today. The landlord stated that due to repeated late payment of rent the landlord did not wish to continue with the tenancy.

Documentary evidence provided by the landlord provided included copies of: the tenancy agreement with the female tenant; the co-tenancy tenancy agreement with both named tenants; the 10 Day Notice issued for April 2012; and, the tenants' ledger account.

Analysis

The tenant raised an issue with the tenancy commencing September 1, 2011 and I briefly considered the tenant's submission and whether he entered into the tenancy agreement under duress. Where a contract is entered into under duress the contract is voidable. Duress is where one party is coerced into entering a contract upon receiving threats, resulting in an absence of free consent. I have found the tenant's submissions to be insufficient to conclude the co-tenancy agreement was entered into under duress for the following reasons:

- The tenant did not provide corroborating evidence that he was living and paying rent elsewhere;
- The tenant completed a tenancy application indicating he was living at the rental unit in August 2011;
- Notifying the female tenant that she may be found to be in breach of her tenancy agreement does not constitute a threat; and,
- I was not provided compelling evidence that would lead me to conclude the tenancy application was completed under duress.

Accordingly, I find the co-tenancy agreement and the requirement to pay rent starting September 1, 2011 to be valid and enforceable.

In light of the above, the tenants were required to pay their full rent when due each month, including April 2012. I am satisfied that the tenants did not pay the full amount owing for April 2012 when due and were duly served with a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case, the Notice was posted on the door and the Act deems the tenants to have received the Notice three days after posting. Therefore, the effective date of the Notice is automatically changed to read April 15, 2012 in accordance with section 53.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended pursuant to section 46 of the Act on April 15, 2012. As the tenants remain in possession of the rental unit the landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

I further find the landlord entitled to recover the outstanding rent of \$379.00 from the tenants and I award this amount to the landlord. Having heard from the tenant that a cheque in the amount of \$379.00 was provided to the landlord's office today the landlord is informed that it is at liberty to cash the cheque. If such a payment was not made, or if the cheque is dishonoured or otherwise returned, the landlord may deduct the outstanding rent from the tenants' security deposit.

As the landlord was successful in this application I authorize the landlord to recover the filing fee by deducting \$50.00 from the tenants' security deposit.

Conclusion

The tenancy has ended for unpaid rent. The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has

been authorized to deduct outstanding rent for April 2012 and the filing fee of \$50.00 from the tenants' security deposit.

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 26, 2012.

Residential Tenancy Branch