



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order. Despite having been served with the application for dispute resolution and notice of hearing via registered mail sent on July 19, the tenants did not participate in the conference call hearing.

At the hearing, the landlords asked to amend their claim to include a claim for loss of income for the month of August. I find that the tenants should reasonably have known that the landlords would not be able to re-rent the unit while they were still residing therein and I permit the amendment.

Issue to be Decided

Are the landlords entitled to an order of possession?
Are the landlords entitled to a monetary order?

Background and Evidence

The landlords' undisputed evidence is as follows. The tenants are obligated to pay \$1,100.00 in rent on the first day of each month. The tenants had repeatedly been late paying their rent and in June, the landlords told them that instead of paying July's rent on July 1, they should pay it on June 30. The tenants paid no rent whatsoever for the month of July and on July 1, the landlords served them with a notice to end tenancy.

The landlords seek an order of possession based on the notice to end tenancy and a monetary order for unpaid rent for July and loss of income for August.

Analysis

Section 46(1) provides that a landlord may end a tenancy if rent is unpaid on any day *after* the day it is due. Although there is no written tenancy agreement, the landlords testified that rent had always been due on the first day of each month. The landlords

cannot unilaterally change that verbal agreement to make rent due on a different day. I find that rent was due on the first day of July and I find that the landlords were not legally entitled to serve a notice to end tenancy on the same day rent was due. Although the tenants' non-payment of rent has provided the landlords with legitimate grounds on which to end the tenancy, I find that the notice served on July 1 cannot effectively end the tenancy and for that reason I order that the notice be set aside and of no force or effect. I dismiss the claim for an order of possession.

I note that the landlords have subsequently served the tenants on August 2 with a notice to end tenancy. The landlords are free to file a claim for an order of possession based on this notice.

I find that the tenants were obligated to pay \$1,100.00 in rent for the months of July and August and that they failed to do so. I award the landlords \$2,200.00. I find that as the landlords have been partially successful in their application, they should recover the filing fee paid to bring the claim and I award them a further \$50.00.

Conclusion

The claim for an order of possession is dismissed. The landlords have been awarded \$2,250.00. I grant the landlords a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: August 14, 2012

Residential Tenancy Branch