



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that he personally served the Tenant L.K. with the hearing documents and their evidence on approximately November 15, 2012, in the presence of a witness, his wife. Based on the submission of the Landlord, I find the Tenant L.K. was sufficiently served notice of this proceeding, and I continued in her absence.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Hearing documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the Tenant L.K. who has been properly served with Notice of this Proceeding. As the second Tenant, D.K. has not been properly served the Application for Dispute Resolution the monetary claim against the Male Tenant D.K. is dismissed without leave to reapply.

The Landlords have requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenants' residence with an adult who apparently resides with the Tenant. Based on the foregoing I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

Issue(s) to be Decided

1. Should the Landlords be issued an Order of Possession?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

At the outset of the hearing the Landlord confirmed that he was not seeking compensation for damages to the unit, site or property at this time and that he wished to withdraw this request. He also noted that on his application that was filed November 13, 2012, he was applying for \$6,600.00 as unpaid rent for October 2012, November 2012, and future rent of December 2012. He confirmed that rent for October 2010 was not outstanding.

The Landlord provided documentary evidence which included, among other things, copies of: the tenancy agreement; a 10 Day Notice dated October 16, 2012 indicating unpaid rent of \$2,450.00 was due as of October 1, 2012; and a proof of service document for the 10 Day Notice.

The tenancy agreement began on September 15, 2010 for a month to month tenancy. Rent is payable on the first of each month in the amount of \$2,200.00 and on September 15, 2010 the Tenants paid \$1,000.00 as the security deposit. The Landlord advised that when the Tenants failed to pay the October rent he served them with a 10 Day Notice by registered mail on October 16, 2012. He submitted that the Tenants received the registered mail on October 17, 2012.

The Landlord initially stated that the Tenants owed him \$6,600.00 in unpaid rent and that they had paid \$2,200.00 in November and \$1,000.00 in December leaving a balance of \$3,300.00. Then upon further clarification he noted that they had an outstanding balance due from September of \$250.00, which was listed on the 10 Day Notice and after their cash payment in October of \$2,200.00 and \$1,000.00 in December 2012 they owed \$3,400.00.

The Landlord contradicted his own testimony a third time when he said the payments were made in October, November and December. I questioned if the Landlord kept a payment ledger or if he issued receipts for these cash payments; which he responded that he did not keep a ledger and did not issue receipts. The Landlord stated his concerns about how the Tenants have remained in the unit without paying the full amount of the rent which has caused him to list the property for sale. He is seeking an Order of Possession for as soon as possible and stated that it is highly unlikely that he will see any of the outstanding rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the evidence supports that the Tenants made some payments towards the unpaid rent. I accept the Landlord's undisputed testimony that the Tenants made partial payments, after the five day period, but never paid the rent in full.

Based on the foregoing, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **October 26, 2012**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

During the course of this proceeding the Landlord provided contradictory testimony regarding the current balance owing for unpaid rent. I accept that at the time the Landlord filed his application on November 13, 2012, the Tenants had outstanding rent; however, there is insufficient evidence before me to prove the amount due. Accordingly, I dismiss the Landlord's monetary claim, with leave to reapply.

The Landlord has been partially successful with his claim; therefore, I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two days upon service** to the Tenants. This Order is legally binding and must be served upon the Tenant.

The Landlord may retain **\$25.00** from the security deposit currently held in trust.

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 12, 2012.

Residential Tenancy Branch