



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and damage to the rental unit, and to recover the filing fee.

The landlord appeared; the tenants did not appear.

The landlord provided evidence that he served the respondents/tenants separately with the Application for Dispute Resolution and Notice of Hearing (the "Hearing Package") by registered mail on January 25, 2013.

Section 90 of the Act states that documents served in this manner are deemed delivered five days later. Thus the Hearing Packages were deemed to have been delivered to the respondent/tenants on January 30, 2013.

I will address my findings on the service of the Notices of Hearing later in this Decision.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules) however; I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

The landlord testified that tenant, GZ, moved into the rental unit on July 1, 2012, with another tenant. Subsequently that tenant moved out and tenant KJ moved into the rental unit.

When questioned, the landlord said that total monthly rent for the rental unit was \$950.00, with GZ being responsible for \$500.00 per month and KJ being responsible for \$450.00.

There is no written tenancy agreement and the landlord said that he is holding a security deposit of \$475.00 paid by the original tenants.

The landlord gave evidence that on January 15, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with tenant KJ on January 15, 2013. The effective vacancy date listed on the Notice was January 25, 2013.

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 landlord stated that as of the date of the Notice, tenant GZ owed \$575.00 in unpaid rent and tenant KJ owed \$850.00 in unpaid rent. The total of these two amounts was listed as unpaid rent on the single Notice issued by the landlord to the tenants.

The landlord said since the issuance of the Notice, tenant GZ paid \$500.00 towards unpaid rent.

When questioned, the landlord said he was not sure if the tenants remained in the rental unit as he has not been by the rental unit since January 24, 2013.

The landlord's relevant evidence included a copy of the Notice and text messages from tenant KJ, listing only her text messages and not the landlord's text message responses.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, as the tenants failed to pay rent or dispute the Notice, the tenancy was conclusively ended by operation of the landlord's Notice on the effective date of the Notice, January 25, 2013.

The landlord served the Hearing Package to the tenants via registered mail to the dispute address on January 25, 2013, and the tenants would have been deemed to have received it on January 30, 2013, if the tenants were still in possession of the rental unit.

As the landlord failed to provide evidence that the tenants remained in the rental unit beyond the effective date of the Notice, or January 25, 2013, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot conclude that the tenants were served with the Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the Act.

Additionally, Residential Tenancy Branch Policy Guideline 13 states that tenants in common sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In the case before me, the landlord's evidence shows that the listed tenants were responsible individually, not jointly and severally, for their portion of the total rent. I therefore conclude that the tenants were tenants in common and not joint tenants. As such I find the landlord was required to serve each tenant with a separate 10 Day Notice to End Tenancy for Unpaid Rent listing the rent owed by each tenant separately, as well as to file a separate application for dispute resolution for each respondent.

Due to the above, I therefore dismiss the landlord's application, with leave to reapply. Leave to reapply does not extend any applicable time limitation deadlines.

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* and is being mailed to both the applicant and the respondent.

Dated: February 20, 2013

Residential Tenancy Branch

