



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, O

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order of Possession because the tenants breached an agreement with the landlords; for an Order permitting the landlords to keep all or part of the tenants security deposit; and other issues.

One of the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to an Order of Possession because the tenants breached an agreement with the landlords?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on November 16, 2012. This was a fixed term tenancy which states that the tenancy must end on June 30, 2013 and both parties have initialled this section of the agreement. Rent for this unit is \$900.00 per month and is due on the first day of the month. The tenants paid a security deposit of \$450.00 on November 23, 2012.

The landlords testify the tenant failed to pay all the rent for March leaving an outstanding balance of \$135.00 the tenants failed to pay all the rent for April leaving an outstanding balance of \$375.00. The tenant failed to pay any rent for June, 2013. The landlords served the tenants with a 10 Day Notice to End Tenancy on June 01, 2013 which documents that rent is outstanding to an amount of \$1,410.00. The landlords testify that the tenants have also failed to pay rent for July and the landlord orally request at the hearing to amend their application as the tenants would have been aware that they should have paid July's rent on the first of the month.

The landlord requests an Order of Possession based on the 10 Day Notice to End Tenancy and seek to keep the tenants security deposit of \$450.00 to offset against the unpaid rent. The landlords request a Monetary Order for the balance.

The landlord further requests an Order of Possession as this was a fixed term tenancy which was due to expire on June 30, 2013. The tenants failed to vacate the rental unit on that day as agreed under the tenancy agreement. A copy of the agreement has been provided by the landlords in evidence.

The tenant attending testifies that they do owe rent for June and July but disputes that they owe any rent for March or April. The tenant testifies that the March and April outstanding amounts were paid to the landlord in cash and no receipt was provided by the landlords.

The tenant testifies that she did sign the tenancy agreement agreeing to vacate the rental unit on June 30, 2013 however the tenant testifies that the landlord sent some people to bully the tenants into leaving so the tenants decided to stay until the hearing to have this documented. The tenant testifies that they could not leave by that date because they also could not find anywhere to go. The tenant testifies that they have now found new accommodation and will be moving out this coming weekend.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant agrees that they have failed to pay rent for June and July I therefore uphold the landlords claim for Junes rent of **\$900.00** and I will allow the landlord to amend their application to include Julys rent of **\$900.00** because the tenants have continued to live in the rental unit during most of July. However, concerning the landlords claim to recover unpaid rent for March and April of \$510.00, the landlords have provided no evidence to show that rent for these months is also outstanding. The tenant disputes that they owe rent for these months. In this matter the burden of proof lies with the landlords to provide corroborating evidence to show that rent is outstanding for March and April. In the absence of any corroborating evidence I find the landlords have not met that burden of proof and I must dismiss the landlords' application to recover rent for March and April, 2013.

I Order the landlords to keep the tenants security deposit held in trust by the landlords of **\$450.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

With regards to the landlords claim for an Order of Possession based on the 10 Day Notice; when a 10 Day Notice is served upon a tenant this Notice must be served on the day after the day that rent is due in accordance with 46(1) of the Act which states:

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As the landlords served this notice to the tenants on the day that rent was due it renders the Notice invalid. The landlords' application for an Order of Possession based on this Notice is therefore dismissed.

With regards to the landlords application for an Order of Possession because the tenants have breached an agreement with the landlord; When the tenancy agreement has been signed and initialed by the parties stating that at the end of the fixed term the tenancy must end and the tenants must vacate the rental unit then the tenancy effectively ends on that date. In this case the landlords and tenant have initialed the tenancy agreement in the section that indicates that the tenancy must end on June 30, 2013. The tenant has stated that she was aware of this but had nowhere to move to. The agreement does not state that the tenants can continue to live in the rental unit after this date; therefore I find the tenants have breached an agreement with the landlords and the landlords are entitled to an Order of Possession.

Conclusion

I HEREBY FIND in partial favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for \$1,350.00. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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: July 15, 2013

Residential Tenancy Branch

