



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with an application by the tenants to cancel a Notice to End Tenancy for Unpaid Rent, and an application by the landlords for an order of possession and a monetary order for unpaid rent and the RTB filing fee.

The landlord's agent and one of the tenants attended the hearing and both gave affirmed evidence. The parties agreed they had each been served with the other party's Application for Dispute Resolution.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

A written tenancy agreement was put into evidence by the landlord stating that the tenancy started on June 1, 2013, the tenants were obligated to pay \$1,295.00 in rent in advance on the first day of the month, and a security deposit of \$1,295.00 was paid. The tenant said that the tenants in fact moved in on or about May 10, 2013; he agreed the written tenancy agreement is accurate as to the amount of rent and security deposit.

The landlord's agent said that she served two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "first Notice") dated December 11, 2013 states that the tenants owe \$1,295.00 in rent due December 1, 2013. The landlord's agent said that the first Notice was in error, since the tenants had in fact made a partial payment of \$900.00 in rent for December 2013. She did not specify how the first Notice was served on the tenants.

The landlord's agent said she served the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "second Notice"), also dated December 11, 2013, on December 11, 2013 by putting it in the tenants' mailbox beside their front door on December 11, 2013. Section 90 of the Act provides that because the Notice was served by leaving a copy in the mailbox, the tenant is deemed to have received the Notice three days later on December 14, 2013. The second Notice states that the tenants owe \$300.00 in rent due December 1, 2013.

The tenant gave affirmed evidence that he paid \$900.00 in cash toward December 2013 rent to the landlord's agent on November 30, 2013. He agreed that he did not pay the balance of \$395.00 for December 2013 rent and did not pay any rent for January 2014.

The tenant said that he received the first Notice by personal service from the nephew of the landlord's agent on December 13, 2013. He said that he did not receive the second Notice at all. The tenant gave evidence that the tenants intend to move out of the rental unit as soon as possible, and are willing to forfeit their security deposit in lieu of unpaid rent.

The parties agreed that the landlord's agent may show the rental unit to prospective new tenants commencing on Sunday, January 19, 2014.

Analysis

Based on the tenant's affirmed evidence, which was not contradicted by the evidence of the landlord's agent, I find that the tenants were served with the first Notice by personal service on December 13, 2013. However, I accept the tenant's evidence that they did not receive the second Notice, despite that the landlord's agent placed it in their mailbox on December 11, 2013.

Although neither the first Notice nor the second Notice accurately stated the amount of rent owing for December 2013, both parties agree that \$395.00 is owing but unpaid for December 2013 and \$1,295.00 is owing but unpaid for January 2014. Further, I find that the tenant was not misled as to the amount of rent owing by the wrong amount stated on the first Notice. For that reason, I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The parties agree that a total of \$1,690.00 is owed by the tenants in unpaid rent. The landlord is also entitled to recoup the filing fee of \$50.00. The amount due the landlord therefore totals \$1,740.00. The landlord is entitled to retain the security deposit of \$1,295.00 in partial satisfaction of the claim. I therefore grant the landlord an order under Section 67 for the balance due of \$445.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order of \$445.00. The landlord is also entitled to retain the security deposit. The tenant's application is dismissed.

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: January 20, 2014