



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Les Investissements Ciame Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD

Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for unpaid rent. The landlord applied for an order of possession and a monetary order for unpaid rent.

Three representatives of the landlord attended the teleconference hearing and gave evidence. The tenant did not attend. The landlord gave evidence that the tenant was served with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on April 11, 2014. I find the tenant was properly served.

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

The landlord provided a copy of the tenancy agreement which was signed by the parties on June 30, 2013. The tenancy agreement indicates the tenancy started July 1, 2013. Two tenants signed the tenancy agreement, although the landlord applied for dispute resolution with only one of the tenants. The landlords' evidence is that they did not know where to find the other tenant for service.

According to the tenancy agreement, the tenants were obligated to pay \$890.00 rent monthly in advance on the first day of the month. The landlords' evidence is that the tenants paid a security deposit of \$280.00, despite a requirement in the tenancy agreement that they pay a larger amount.

The landlords gave evidence that they received only half the rent for each of November 2013, December 2013, January 2014, and February 2014. The landlords' evidence is that the tenant in this application had his half of the rent (\$445.00) paid to them directly by the government. The landlords' evidence is that they did not receive the other half of the rent from the other tenant.

The landlords gave evidence that the other tenant moved out of the rental unit at the end of February 2014.

The landlords gave evidence that they served the tenant in this application with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenant's door on March 3, 2014. Section 90 provides that a Notice served in this manner is deemed to be received by the tenant three days later, on March 6, 2014.

The Notice specifies that the tenant failed to pay \$2,835.00 in rent that was due March 1, 2014. The landlords' evidence is that this figure is comprised of: \$165.00 unpaid security deposit, \$445.00 unpaid rent for each of November 2013, December 2013, January 2014, and February 2014, and \$890.00 unpaid rent for March 2014. The Notice specifies an effective date, or move-out date, of March 18, 2014.

The landlords gave evidence that the tenant made no rent payments after the Notice was served.

Analysis

Since the tenant did not attend the hearing, despite being properly served, his application to cancel the notice to end tenancy is dismissed.

I find the tenant received the Notice on March 6, 2014. I find the Notice specified the incorrect amount of unpaid rent that was owing on the date the Notice was served, because the amount included part of the security deposit as well as unpaid rent. According to the landlord's evidence, the amount of unpaid rent owing on March 6, 2014 was actually \$2,670.00. I allow the landlord to amend the Notice to specify an unpaid rent amount of \$2,670.00.

I accept the landlord's evidence that the tenant has made no further payments since he received the Notice. According to Section 46(5), if a tenant does not pay the rent or make application for dispute resolution within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. Although the tenant

applied for dispute resolution, he did not attend the hearing to advance his application. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend his Application for Dispute Resolution to include a claim for April 2014 rent of \$890.00. The landlord is entitled to recover unpaid rent totalling \$3,560.00. I order that the landlord retain the security deposit of \$280.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,280.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

According to Residential Tenancy Policy Guideline **13. Rights and Responsibilities of Co-tenants:**

“Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing the landlord.”

In this case, the landlords have chosen to seek to recover the unpaid rent from the tenant in this application, despite that the tenant in this application paid his share of the rent for November, December, January, and February. It is the landlord's right to proceed in this fashion. The tenant in this application has a legal right to seek to recover some amount of this unpaid rent from his former co-tenant by initiating an action against the former co-tenant in Small Claims Court.

Conclusion

I grant the landlord an order of possession and a monetary order for \$3,280.00. The landlord is also entitled to retain the security deposit.

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: April 29, 2014

Residential Tenancy Branch

