



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order for unpaid rent.

The landlords attended the teleconference hearing and gave affirmed evidence. The tenants did not attend. The landlords gave evidence that they served one tenant personally on April 3, 2014 and served the other tenant by registered mail on March 28, 2014. I find the tenants were properly served.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The landlords gave evidence that the tenancy started on January 15, 2014 and the tenants were obligated to pay \$1,600.00 rent monthly in advance on the first day of the month. The parties agreed that rent for the period January 15, 2014 to February 1, 2014 would be \$800.00. The tenants were also required to pay a security deposit of \$800.00 and a pet deposit of \$200.00.

The landlords gave evidence that the tenants' cheque for \$1,800.00 was deposited on January 16, 2014 and was returned by the bank on January 17, 2014 for insufficient funds.

The landlords gave evidence that the tenants made a \$600.00 payment on January 21, 2014 and an \$800.00 payment on February 3, 2014. The landlords gave evidence that they served a Notice to End Tenancy for Unpaid Rent (the "Notice") personally on the

tenants on February 4, 2014. The Notice specified that the tenants had failed to pay \$2,800.00 in rent due on February 1, 2014. The landlords said they calculated this amount by adding the following: \$200.00 remaining January rent, \$1,600.00 total February rent, and \$1,000.00 for the two deposits which were as yet unpaid.

The landlords gave evidence that one of the tenants provided a cheque for \$2,000.00 on February 5, 2014 but it was returned insufficient funds. The landlords' evidence is that one of the tenants has vacated the rental unit and the remaining tenant provided payments of \$1,600.00 on each of approximately March 1, 2014 and approximately April 1, 2014. The landlords gave evidence that they accepted these payments but did not intend to reinstate the tenancy by doing so.

Analysis

Where two or more tenants enter into a tenancy agreement to share a rental unit, the tenancy is assumed to be a joint tenancy unless there is evidence to the contrary. In this case, there is no evidence to the contrary and I find it was a joint tenancy. In a joint tenancy, the tenants are jointly and severally liable for the rent and the landlord can choose to pursue one or both of the tenants for any unpaid amounts. Residential Tenancy Policy Guideline 13. "Rights and Responsibilities of Co-tenants" sets out RTB policy on this issue.

I find the tenants received the Notice on February 4, 2014. I find the Notice specified the incorrect amount of unpaid rent that was owing at February 4, 2014. According to the landlords' evidence, the correct amount of outstanding rent at February 4, 2014 was \$1,000.00 partial February rent. It is very likely that the tenants were aware of the amounts that were due, since the tenancy was only a few weeks old at the time they received the Notice. For that reason, I find it is appropriate to amend the Notice to specify an unpaid rent amount of \$1,000.00 at February 4, 2014.

According to Section 46(5), if a tenant does not pay the rent or make an application for dispute resolution, the tenants are 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. For these reasons, I find that the landlords are entitled to an order of possession.

Since it was not clear between the parties which payments were intended to be rent payments and which payments were intended to be payment of one or both of the two deposits, I find that all payments made by the tenants are rent payments. I further find that the tenants have not paid either the security deposit or the pet deposit.

I find the landlords accepted the March 1, 2014 and April 1, 2014 payments from the remaining tenant for the use and occupancy of the rental unit only. If the payments are applied to the earliest outstanding amounts due, then the tenants have paid rent for the latter half of January, all of February, all of March, and partial rent for April 2014. I find the tenants have paid \$600.00 for use and occupancy of the rental unit in the month of April 2014. At a monthly rent of \$1,600.00, this entitles the tenants to have occupancy of the rental unit for 37.5% of the month. Since April has 30 days, this equates to giving the tenants use and occupancy of the rental unit for 11.25 days. Accordingly, an order of possession will be issued today which requires the tenants to vacate the rental unit within 48 hours of the time the Order is served. The Order must be served on whichever of the tenants are still in possession of the rental unit.

Since one of the tenants still occupies the rental unit, the landlords will likely not obtain vacant possession until approximately April 15, 2014. I find it is unlikely the landlords will obtain new tenants for the latter half of April 2014. For that reason, the landlords have proven they will suffer a loss of rental income of \$1,000.00 for the month of April 2014. I grant the landlord a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlords an order of possession and a monetary order of \$1,000.00.

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 10, 2014

Residential Tenancy Branch

