



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, for authority to retain the tenant's security deposit, and to recover the filing fee.

The landlord, JA, and his agent, NH, attended; the tenants did not attend the telephone conference call hearing.

The landlord gave evidence that they served the tenants with the Application for Dispute Resolution and Notice of Hearing by leaving it with the tenants on April 2, 2014.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

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

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution 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, monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord stated that this tenancy began in November 2013, and confirmed that there is no written tenancy agreement and that no security deposit was paid by the tenant.

In response to my questions, the landlord at first stated that the tenants were KE and WP; however, later in the hearing, the landlord stated that KE was the tenant and that WP was a subtenant.

Further still, the landlord stated that KE's monthly rent was \$500 and that she was to sub-lease two other bedrooms for \$500 each, for a total monthly rent of \$1500.

The only documentary evidence submitted by the landlord were two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The first Notice listed KE and WP as tenants, was dated March 6, 2014, and listed unpaid rent of \$1000 and \$677.93 in unpaid utilities as of March 1, 2014. The Notice was signed by landlord JA.

The second Notice listed WP as a tenant, was dated March 6, 2014, and listed \$500 in unpaid rent and \$677.93 in unpaid utilities as of March 1, 2014. The second Notice was signed by an unknown third party.

The landlord's agent NH submitted that she personally served KE both of the Notices on March 6, 2014.

The effective vacancy date listed on both Notices was March 16, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that partial rent for March 2014, was received from KE and WP, and that the amount of \$760 remained unpaid for March.

Although the landlord failed to have the tenant sign a tenancy agreement, he contended that the tenant owed for unpaid utilities.

The landlord did not state or submit any evidence that the tenant or tenants had paid any rent for April or May 2014, and if so, whether the landlord accepted the rent on a for use and occupancy basis, as the landlord failed to provide receipts, accounting records, or tenant ledger sheets.

Analysis

In the case before me, the landlord provided confusing and contradictory evidence as to which party listed as a tenant was the actual, responsible tenant. From the landlord's own evidence, it appears that KE is the only tenant regarding this particular tenancy.

Further, section 11 of the Residential Tenancy Guidelines provides that if a landlord accepts the payments of rent for the period after the effective date of the Notice, then

the intention of the parties will be an issue. According to the guidelines, intent can be established by evidence when:

- The receipt shows the money was received for use and occupancy only
- The landlord specifically informed the tenant that the money would be for use and occupancy only
- The conduct of the parties indicates intention.

Without any payment records or any other documentary evidence, I am unable to determine whether the landlord has reinstated the tenancy by accepting rent for April or May, or if any such rent was paid.

Due to the landlord's insufficient evidence, I dismiss the landlord's application, with leave to reapply in order to prove that he has not reinstated the tenancy, and to provide further proof, if any is available, as to the responsible tenant.

I advise the landlord that this Decision was made necessary, in part, due his failure to comply with section 13(1), which requires that landlords provide written tenancy agreements for each tenant, or to provide any proof of the responsible tenant or the monthly rent amount as his testimony contradicted his written evidence, the Notices.

Conclusion

The landlord's application is dismissed with leave to reapply due to insufficient evidence.

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: May 25, 2014

Residential Tenancy Branch

