



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession pursuant to Section 55; a monetary order for rent owed, pursuant to Section 67; and a monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent?
- Is the tenant entitled to an Order cancelling the Notice to End Tenancy?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in September 2013. The current rent is \$800.00 per month payable on the 1st day of each month and no security deposit was paid. No copy of the tenancy agreement was submitted into evidence.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence showing that the tenant was in arrears as of February 17, 2014, for \$350.00. The landlord

testified that the tenant was served with the Ten Day Notice to End Tenancy for Unpaid Rent but failed to pay the arrears within 5 days to cancel the Notice. The landlord testified that the tenant then failed to pay \$800.00 rent owed for March 2014 and also \$800.00 for April 2014, accruing arrears of \$1,950.00, which is being claimed. The landlord is seeking a monetary order and an Order of Possession.

The tenant's testimony confirmed that the tenant failed to pay \$350.00 of the rent for February 2014. The tenant stated that there was a co-tenant who failed to pay their share of the rent. The tenant stated that the two rental agreements should have been treated as separate tenancies because the landlord had filled out separate forms for each co-tenant to establish housing support from the Ministry.

The tenant acknowledged that they and did not pay the arrears owed for February 2014 within 5 days to cancel the Notice. The tenant testified that they also withheld their rent for March and April 2014 in protest against how they were being treated by the landlord.

The tenant stated that they still have all of the rent owed and can pay the rental arrears in full. The tenant asks that the Ten-Day Notice be cancelled.

Analysis:

In regard to the tenant's testimony that the rental unit was shared and that the tenants each paid their own portion of the rent, I find that Residential Tenancy Guideline #13, *Rights and Responsibilities of Co-tenants*, clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for 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 to the landlord.

In the case before me, I find that this tenant was a co-tenant and regardless of which one did not furnish their share of the rent, they are both responsible for any shortfalls. I find that, when the tenancy ends for one, it ends for both.

In regard to the 10-Day Notice to End Tenancy for Unpaid Rent, I find that a landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that there is no dispute about the fact that the tenant owed arrears for rent and failed to pay the rent within 5 days of receiving the Notice. Payment of the rent within

five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid and the Notice was therefore still in effect.

I find that the Notice for unpaid rent is supported and the criteria for ending the tenancy under section 46 of the Act was met by the landlord. Therefore I find that the Ten-Day Notice can't be cancelled and the landlord is entitled to an Order of Possession.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the rent when it was due and currently owes arrears in the amount of \$1,950.00. I find that the landlord is entitled to \$2,000.00, comprised of \$1,950.00 accrued rental arrears and the \$50.00 cost of the application.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue a monetary order to the landlord for \$2,000.00. This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled is dismissed without leave.

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 17, 2014

Residential Tenancy Branch

