



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 23, 2014, the landlord handed both Respondents the Notice of Direct Request Proceeding at 5:00 p.m. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the Respondents were served with the Direct Request Proceeding documents on May 23, 2014, as declared by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*? Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notices of Direct Request Proceedings served to the Respondents;
- A copy of a Residential Tenancy Agreement (the Agreement) which was signed by the landlord and the male Respondent (KC) on January 16, 2014, indicating a monthly rent of \$2,400.00 due on the 28th day of the month for a tenancy that commenced on August 28, 2013; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the female Respondent (ALM) on May 16, 2014, with a stated effective

vacancy date of May 26, 2014 for \$1,800.00 in unpaid rent identified as owing on May 1, 2014.

Documentary evidence witnessed by a Police Constable and filed by the landlord indicates that the Respondents failed to pay all outstanding rent was served by handing the female Respondent the 10 Day Notice on May 16, 2014. In accordance with sections 88 and 90 of the *Act*, the male Respondent, the only tenant who signed the Agreement, was deemed served with this 10 Day Notice on May 16, 2014.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the male Respondent has been served with notice to end tenancy as declared by the landlord.

In reviewing this matter, I note that the Agreement entered into written evidence was only signed by the male Respondent and the landlord, and that this did not occur until 4 ½ months after this tenancy started. As such, the landlord can only seek a monetary award against the male Respondent, the sole tenant signatory to the Agreement.

I also note that the Agreement requires payment of monthly rent on the 28th of each month. The landlord's application for dispute resolution maintained that the only payment received for the May 2014 rent was a \$600.00 payment. The landlord did not provide a tenant rent ledger or any other information regarding how much was paid or when, and whether the amount identified as owing came due on April 28th, May 28th, or some other date. It is possible that the parties made some form of oral agreement whereby monthly rent became owing on the 1st of each month instead of the 28th of the month, as stated in the Agreement. However, as the Agreement was signed 4 ½ months after this tenancy began, I would think that any alternate arrangements that had been made to pay monthly rent on a date other than that set out in the Agreement could have been remedied by January 16, 2014, and incorporated into that Agreement. In the absence of any other information from the landlord to support the application for an end to this tenancy and a monetary award, I can only rely on the landlord's stated claim that the May 2014 rent was the unpaid rent allegedly owing for this tenancy. I find that the terms of the Agreement establish that the only rent that became owing for May 2014 did not become due until May 28, 2014, well after the landlord issued the 10 Day Notice and even after the landlord applied for dispute resolution seeking an Order of Possession and a monetary Order.

While it is possible that the landlord's claim for unpaid rent was actually for rent owing from April 28, 2014, I cannot infer that from the landlord's application without evidence from the landlord to demonstrate that this was the case, complete with a full tenant rent ledger for this rental unit, and that the signed terms of the Agreement requiring payment of rent on the 28th of each month were no longer in effect. As the May 2014 rent was not due until May 28, 2014, I dismiss the landlord's application for an end to this tenancy on the basis of the 10 Day Notice for unpaid rent owing from May 2014, without leave to reapply. The 10 Day Notice of May 16, 2014 is of no force or effect. If rent is now owing, the landlord can issue a new 10 Day Notice.

I also dismiss the landlord's application for a monetary Order, as I find that the landlord has not provided sufficient evidence to demonstrate that the May 2014 rent, the stated cause for the landlord's monetary claim, was actually owing as of the date of the landlord's application,. The landlord is at liberty to submit a new application for a monetary Order if rent is now owing for this tenancy.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice without leave to reapply. The 10 Day Notice of May 16, 2014 is of no force or effect.

I dismiss the landlord's application for a monetary Order with leave to reapply if rent is now owing for this tenancy.

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 30, 2014

Residential Tenancy Branch

