



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing and all parties gave affirmed testimony. The landlords also provided evidentiary material to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on October 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable under the written tenancy agreement on the 1st day of each month. The landlords have not collected a security deposit or a pet damage deposit from the tenant. A copy of the agreement has been provided.

The landlord further testified that the tenant was repeatedly late paying rent, and has not paid any for the months of March, April, May, June or July, 2014, now owing \$5,000.00. The landlord personally served to the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but does not recall the date that it was served. A copy of the notice has been provided, and it is dated May 10, 2014 and contains an expected date of vacancy of May 24, 2014. The notice states that the tenant failed to pay rent in the amount of \$3,000.00 that was due on May 1, 2014, and the landlord testified that the tenant has paid no rent since the issuance of the notice.

The other landlord testified that she was present, waiting in the car, when the notice to end tenancy was served, and that the date of service was May 10, 2014. No rent has been paid since, and the landlords have not been served with an application for dispute resolution by the tenant disputing the notice.

She also testified that the parties had a conversation in February, 2014 wherein the parties verbally agreed that the tenant would move out by July 23, 2014.

The tenant testified the landlords had told the tenant that they wanted him to move out temporarily because they were building a house and their daughter was getting married in the summer, so they needed the rental unit until they got an occupancy permit to move into the new house.

The tenant further testified that he did not dispute the notice because he believed he could work with the landlords. When the notice was served, the tenant offered the rent but the landlord told the tenant not to worry about the rent. The landlord would provide the tenant with the \$3,000.00 as moving expenses for the tenant's tools and other belongings, and the parties had a gentleman's agreement that the tenant would move out by July 23, 2014. The tenant is prepared to move out by that date, but stated that the agreement also included a promise that the tenant could move back in at the end of September or October, 2014.

Analysis

The *Residential Tenancy Act* is clear: once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does

neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after service. In this case, I have reviewed the notice and find that it is in the correct form, both pages of the 2-page form have been provided, and the notice contains information required under the *Act*. I accept the undisputed testimony of the landlord that the notice was served on May 10, 2014. The tenant did not pay the rent, has not paid any rent since being served, and did not dispute the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlords are entitled to an Order of Possession.

With respect to the monetary order, the tenant has not disputed that he hasn't paid any rent since the issuance of the notice. I accept that the parties had some sort of verbal agreement which included vacant possession of the rental unit on July 23, 2014, however, the *Act* states that if a landlord wants the rental unit for his or her own purposes, the landlord must serve the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property and must provide the tenant with the equivalent of one month's rent as compensation. In this case, the landlords didn't serve the tenant with such a notice, the parties did not enter into a written agreement, and therefore I find that the landlords are not required to provide the tenant with any compensation.

The tenant also testified that rent was offered when the notice to end tenancy was served and the landlord told the tenant not to worry about the rent, but the landlords do not agree with that, and the tenant has not received any such agreement in writing. Where a party uses a legal form to serve on another party, that party should consider going through legal channels or at least get an agreement in writing.

I find that the tenancy agreement provides for rent in the amount of \$1,000.00 per month, and I accept the undisputed testimony of the landlords that the tenant has not paid any rent, and I find that the landlords have established a monetary claim as against the tenant for unpaid rent for March, April, May and June, 2014. With respect to July's rent, I find that the landlords are entitled to half a month's rent for the first part of the month for use and occupancy.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,550.00.

These orders are final and binding and may be enforced.

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: July 09, 2014

Residential Tenancy Branch

