



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, OPR, FF

Introduction

The landlord applies for an Order of Possession and a Monetary Order.

Issues to Be Decided

- Has the landlord properly served a 10 day Notice to End Tenancy (the "Notice") upon the tenants?
- If so, is the notice effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenants?

Background and Evidence

The parties agree that this dispute is regarding a basement suite tenancy, which attracts rent of \$950.00, due on the first day of each month, and that the upstairs of the home is rented by the mother of the female tenant. Otherwise there is virtually no consensus as to the underlying facts of this tenancy, and the testimony of each of the parties is significantly different from the testimony of the other.

The landlord testified that the premises were vacant as of May 1, 2014 and he was asked to hold the suite for the tenants. Near the end of May, the tenants illegally entered the premises through a window without the landlord's knowledge, and began residing there. During the last week of May, the tenants paid a total of \$950.00 to the landlord, with the male tenant paying \$500.00, the female tenant paying \$300.00 towards rent and \$150.00 towards the security deposit. Two days later the mother of the female tenant paid a further \$200.00. The landlord accepted these various payments as the rent for May of \$950.00, and a portion of the security deposit of \$200.00. The landlord prepared a written tenancy agreement which was backdated effective May 1, 2014. The tenants signed this agreement. The female tenant's mother agreed at that time that she would become liable for 1/3 of the rent (of \$317.00). The male and female tenant's portion of the rent was then reduced to \$317.00 each, to be paid by way of government "welfare" cheque. No rent was paid for June, and on June 2, 2014, the landlord personally served the tenants with a 10 day notice to end tenancy. Although repeatedly being promised, no rent was paid and on June 30, 2014, the landlord filed this claim. The landlord subsequently received \$317.00 for July rent and \$317.00 for August rent, both payments made by way of government cheque on behalf of the male tenant.

The female tenant initially testified that the tenancy began June 1, 2014, then later testified it had begun in May. She alleged she provided government cheques of \$400.00 and \$275.00 to the landlord on June 1, 2014. She testified that the government was going to pay her rent directly to the landlord thereafter, and she is sure it was paid. She later testified there may have been a month where the rent was paid late, due to a government computer malfunction.

The male tenant testified he initially paid cash rent of \$550.00, and subsequently relied upon the government to pay his portion of the rent.

The female tenant's mother testified that she rents the upper portion of the house. No one lived in the basement in May. The landlord wanted the tenants to rent the premises in May, but the female tenant was already renting elsewhere, and her tenancy would not end until the end of May. The female tenant's mother believes the landlord may have signed an Intent to Rent for a third male tenant, effective for July, and this explains why each tenant's portion of the rent was reduced to \$317.00.

Analysis

The differences in the landlord's and tenants' evidence raises the question of the credibility of the various persons who testified. I generally accept the landlord's testimony, and prefer it over the testimony of the tenants. His testimony was provided in a forthright manner, and was consistent throughout the hearing, whereas the testimony of the female tenant varied, as new facts emerged. The male tenant provided little testimony, other than as to the original sum paid. He stated he believed he had initially paid \$550.00, but I prefer the landlord's testimony that he had paid only \$500.00 at that time.

I also note that the handwritten written tenancy agreement is dated May 1, 2014, but is signed by the female tenant on June 2, 2014. On the final page, immediately above the signatures of the tenants (and the tenant's mother as witness) the agreement states "They took the place May 1st, but sign in June the contract", and "The rent is divided between three persons, \$317.00 each" specifically naming the male tenant, the female tenant, and the mother of the female tenant. As such, the content of this portion of the tenancy agreement (which was subsequently signed by the tenants) supports the testimony of the landlord, and confirms that from the landlord's perspective, an agreement that the tenant would begin effective May 1.

I also accept the landlord's testimony as to the amounts of rent he received by way of government cheque from the tenants. I note that the tenants provided no written confirmation of any such payments, and given that the payments would go directly to the landlord, would have no knowledge of the cheques actually received.

I accept that landlord's testimony that the tenancy began effective May 1, and that the rent paid at the end of May was for May's rent. I note that the tenants have not disputed the 10 day Notice to End Tenancy, which they received June 2, 2014. Given that they

had paid their rent only days prior, if indeed that rent payment had been intended for June and not for May, the proper procedure would have been to dispute the Notice. Section 46(4) of the Residential Tenancy Act provides two options to a tenant who receives a notice to end the tenancy for unpaid rent. Within 5 days after receiving the notice, the tenant may pay the overdue rent, or may dispute the notice. Pursuant to section 46(5) a tenant who does neither is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

Given that the landlord's hearing was not scheduled until August 27, I do not consider that his acceptance of the partial rent payments for July and August have reinstated the tenancy. I find that these were accepted on a use and occupation basis, pending the outcome of the hearing.

In the absence of the required June rental payment, or a dispute of the notice within the 5 day period set out in the Notice, the tenants are conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. As the effective date of the Notice has passed, the landlord has established a right to possession, and I issue an Order of Possession effective 48 hours following service upon the tenants, pursuant to Section 55(2)(b) of the Residential Tenancy Act.

The landlord is also entitled to a Monetary Order for the claimed rental arrears and filing fee from the tenants. The sum claimed by the landlord in his application is limited to the rent for June, and for the balance of the security deposit. No application was made to amend the claim, and as the tenancy has ended, there is no need for the deposit to be ordered paid. I therefore award the landlord the sum of \$950 for the loss of rent for June, plus recovery of the landlord's \$50.00 filing fee. The landlord remains at liberty to file for any other loss of rental income, or any damage to the premises that may be discovered, once the tenants have vacated the premises.

Conclusion

I issue an Order of Possession effective 48 hours following service upon the tenants, pursuant to Section 55(2)(b) of the Residential Tenancy Act.

I issue a Monetary Order for \$1,000.00, payable by the tenants to the landlord.

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: August 27, 2014