



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent dated April 28, 2014, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing, the landlord stated that they are no longer seeking an Order of Possession as the tenant vacated the unit on May 6, 2014. The landlord still seeks a monetary order for the rent owed.

Preliminary Matter

The landlord testified that they sent a registered mail package addressed to each co-tenant. The landlord testified that they had a valid forwarding address for the female co-tenant. However, they sent the Notice of Hearing package to the male co-tenant addressed to "*general delivery*" and the package was returned, after which they mailed it to the male co-tenant's place of employment.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order which requires that the landlord serve the tenants as set out under Section 89(1).

Section 89(1) of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (a) by **leaving a copy with the person**;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by **registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if **the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;**

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In addition to the above, Rule 3.1 of the Residential Tenancy Rules of Procedure states that the applicant must serve **each respondent** with a copy of the Application for Dispute Resolution, along with copies of all of the following: a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; c) the details of any monetary claim being made, and d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

In this case, I find that the landlord had only served the female co-tenant in compliance with the Act, I find that the manner of service to the male co-tenant was not compliant with the Act nor the Rules of Procedure.

Accordingly, I find that the female co-tenant was duly served with the Notice of Hearing and evidence. I find that the male co-tenant was not properly served and therefore the dispute before me will only proceed against the female tenant who was found to be served.

Despite being served by registered mail sent on March 4, 2013, the respondent did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears?

Background and Evidence

The landlord testified that the tenancy began on June 1, 2012, at which time the tenant paid a security deposit of \$725.00 and a pet damage deposit of \$725.00.

The tenant testified that the tenant failed to pay rent for the month of April 2014 and a 10-Day Notice to End Tenancy for Unpaid Rent was issued on April 28, 2014, with effective date of May 8, 2014.

The landlord testified that the parties agreed the tenant could use their \$1,450.00 security deposit and pet damage deposit in lieu of the rent owed for the month of April, 2014. The landlord testified that the rent for April 2014 was therefore paid in full and tenant did vacate in accordance with the Notice, moving out May 6, 2014.

However, the landlord is claiming an additional loss of revenue of \$1,450.00 for the month of May 2014.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy, and a copy of the tenancy agreement.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant paid the outstanding rental arrears by agreement with the landlord to allocate the tenant's security deposit and pet damage deposit towards the rent for April.

I find that the tenant did comply with the Notice from the landlord by moving out before the effective date shown on the Ten Day Notice to End Tenancy for Unpaid Rent. However, as the tenant remained in the rental unit for 6 days during the month of May 2014, without paying rent I find that the landlord is entitled to rent for the 6 days.

With respect to the landlord's claim for loss of rent for the month of May 2014, I find that the Residential Tenancy Policy Guidelines offers the following guidance:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

- 1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment; (My emphasis)*
- 2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy. (My emphasis)*

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the Act or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant, while the tenant remains in possession of the premises, is sufficient notice. Filing of a

claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent was claiming \$1,450.00 rent owed for the month of April which is no longer owed.

I find that the landlord's application, seeking loss of revenue for May 2014, was filed on May 13, 2014, after the tenant had already vacated on May 6, 2014, in accordance with the Ten Day Notice. I find that the application was filed after the tenant had agreed to forfeit the security deposit and pet damage deposit to satisfy the rental arrears for April.

Accordingly, I find that the tenant was not put on Notice of the landlord's claim for loss of revenue for May 2014, while the tenant was still in possession of the rental unit. That being said, I find that the tenant would be aware that rent is owed and payable for the 6-day period during which the tenant was still in possession of the rental unit during the month of May 2014 and I grant the landlord compensation in the amount of \$336.00 comprised of \$286.00 pro-rated rent owed for the 6-days in May and the \$50.00 cost of the application.

I hereby grant the Landlord a monetary order, under section 67 of the Act, for \$336.00. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted a monetary order for rental arrears. The request for the order of possession was found to be moot, as the tenant vacated prior to the hearing.

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: September 18, 2014

Residential Tenancy Branch

