



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnc, cnr, mnr, opr, ff

Introduction

The tenants apply for an order to cancel two notices to end the tenancy. The landlord applies for an Order of Possession, and a Monetary Order for unpaid rent.

The tenants failed to attend the hearing. The tenants were clearly aware of the hearing, having initiated it themselves. I accept that the tenants were properly served with the relevant notices and notice of this hearing.

Issues to Be Decided

- Are either of the Notices to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant to the landlord?

Background and Evidence

This tenancy began on or about July 12, 2014. Rent is due on the 1st day of the month, in the amount of \$1,200.00. A security deposit of \$600.00 was paid July 2, 2014. The tenants paid only the prorated rent for July, and have paid no rent since. The landlord served a one month notice to end the tenancy to the tenants September 1, 2014, then a ten day notice to end the tenancy on September 3, 2014, for non-payment of rent. The tenants filed a dispute of both notices, but did not pay any further rent.

Analysis

The landlord wishes to proceed with the enforcement of the 10 day notice, which is appropriate in this case. I find the landlord fully credible, and accept that no rent has been paid for August, September or October. As the claim is for unpaid rent, and as the hearing has not occurred until late October, the tenants will know or should know that the October arrears will form part of this decision, even though not specifically stated in the application. I amend the application accordingly.

A tenant must pay rent when it is due under the tenancy agreement, and the tenants in this case were required to pay their full rent on or before the first day of each month.

When the rent was not paid in full, the landlord was entitled in law to serve the 10 day notice ending this tenancy, for non-payment of the rent. Upon receipt of that notice, the tenants should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenants failed to do so, and their failure to attend the hearing and give any testimony results in the dismissal of the claim they filed to dispute the notices. The 10 day notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenants' claim is dismissed.

The tenant's application states they paid rent to the landlord. I prefer the sworn testimony at the hearing of the landlord, which I found to be entirely credible, that no rent was paid, other than the July rent, for which proper receipts were issued. I find the landlord has lost rental income for August, September and October and that the tenants are liable for this lost rental income. The landlord is entitled to an award of \$3,600.00 representing the rental arrears for March and loss of rent for April. The landlord may also recover the \$50.00 filing fee from the tenant. This results in a total sum of \$3,650.00 owed by the tenants to the landlord.

Given this outcome, the issues associated with the one month Notice to End Tenancy are now moot, and I need not address those in this ruling. I also dismiss the tenants' application to cancel the 10 day notice.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I further order the tenants pay to the landlord the sum of \$3,650.00.

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: October 29, 2014

Residential Tenancy Branch

