



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, opr, mndc

Introduction

The tenants have applied for an order to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord requests an Order of Possession and a Monetary Order.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenants effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there money due and payable by the tenants to the landlord?

Background and Evidence

This tenancy began April 9, 2014. Rent is due in advance on the first day of the month, in the amount of \$2,500.00. The hydro is shared, with the tenants liable to pay 80%. The remaining 20% relates to a coach house on the property, for which the landlord is responsible.

The tenants fell into arrears. In November, the tenants offered to make their regular monthly rental payments and make additional future lump sum payments towards the arrears. The landlord denies ever agreeing to this offer. The tenants have since offered to make partial payments of the arrears in hopes they would be able to stay in the premises and eventually catch up all arrears. The landlord declined to accept any such partial payments, and did not wish to reinstate the tenancy. The landlord served the tenants with a 10 day Notice to End Tenancy, which the tenants received on January 9, 2015.

The current sum owed as of January 31, 2015 is \$8,332.00. This sum is the balance owed after crediting the tenants with \$468.00 (landlord's share of a hydro payment made by the tenants on December 31, 2014 of \$2,343.34), and after crediting the tenants with their last payment of \$1,200.00 towards rent in December. I note that no rent has been paid for February, and that the tenants are agreeable to an amendment to the claim, to recognize rent due for February. The tenants remain in possession of the premises at this time.

Analysis

I accept the landlord's testimony that he did not agree to the tenants' offer made in November to defer payments of the arrears into the future, and to pay only the full monthly rents due in the

meantime. I further note that even if this agreement had been accepted, the tenants breached that proposed agreement in any event by failing to make the full rental payment in December (and paying only \$1,200.00).

I find the landlord was entitled in law to serve the 10 day notice ending this tenancy, for non-payment of rent. Upon receipt of that notice, the tenants were required to pay the full rental arrears within the required 5 day period, in order to have the tenancy continue. The tenants failed to do so. I find that the Notice was validly given, and I dismiss the tenants claim to cancel the Notice. The Notice is therefore found effective to end this tenancy, and the landlord has established a right to possession.

I accept that as of January 31, 2015, the sum owing to the landlord was \$8,332.00. Even if the tenant vacate immediately, the earliest date the landlord might be able to re-rent the premises after the tenants vacate will be February 15, and I therefore find the tenants must also pay a further \$1,250.00 to the landlord. The total award granted to the landlord is therefore \$8,332.00 + \$1,250.00 = \$9,582.00. The landlord remains at liberty to re-apply for any further loss of rental income, once such loss is known.

Conclusion

The tenants' claim to cancel the notice is dismissed.

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.

The tenants must pay the sum of \$9,582.00 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: February 03, 2015

Residential Tenancy Branch

