



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenants' application for an order setting aside the 10 Day Notice to End Tenancy for Non-Payment of Rent.

Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The tenants were living in this unit when the landlord purchased the property. A new tenancy agreement was signed on March 1, 2015. The landlord thought they agreed to a six month fixed term tenancy continuing thereafter as a month-to-month tenancy. The tenants thought they agreed to a month-to-month tenancy. The tenancy agreement itself says both. Under the new agreement the monthly rent was reduced to \$910.00 due on the first day of the month. The security deposit of \$475.00 paid previously by the tenants was carried forward to the new agreement.

One co-tenant paid half the March rent - \$455.00 – in cash on March 2. The other co-tenant gave the landlord a cheque in the amount of \$455.00 post-dated to March 6. The landlord deposited the cheque before the 6th and it was returned marked NSF.

The tenant then paid \$255.00 to the landlord's bank account on March 9. There is a text message from the tenant to the landlord where he promises to pay the balance on March 20.

On March 10 the landlord issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent.

The tenant did not make any payment on March 20 and the April rent has not been paid by either tenant.

The tenants have given written notice that they are vacating the rental unit on April 30. The landlord would like an order of possession for an earlier date.

Analysis

There is no evidence that the landlord agreed to a payment schedule for the March rent.

When the notice to end tenancy was served there were arrears of rent owing in the amount of \$200.00. Those arrears were not paid within five days of service of the notice to end tenancy on the tenants as permitted by section 46(4) of the *Residential Tenancy Act*. . Accordingly, the notice to end tenancy is valid and the landlord is granted an order of possession effective two days after it is served on the tenants.

The landlord's and tenants' evidence is both that the arrears of rent for March are \$200.00 and for April they are \$910.00 for a total of \$1110.00.

As the landlord was successful she is entitled to reimbursement from the tenants of the \$50.00 she paid to file her application.

In summary I find that the landlord has established a total monetary claim of \$1160.00 comprised of arrears of rent in the amount of \$1110.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$475.00 and I grant the landlord an order under section 67 for the balance due of \$685.00.

Conclusion

- a. An order of possession has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order has been granted to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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: April 23, 2015

Residential Tenancy Branch

