



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 was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on April 2, 2015.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of security deposit

Background and Evidence

The tenancy began on September 1, 2013. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

The parties agreed that tenants were served on April 2, 2015, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the amount of \$2,000.00, with an effective vacancy date of April 7, 2015. The effective vacancy date automatically corrects to April 12, 2015, under the Act.

The parties agreed that the outstanding rent was paid as follows: \$700.00 on April 18, 2015, \$1,050.00 on April 23, 2015 and the balance paid on April 29, 2015. The parties agreed that the rent for May 2015, has not been paid by the tenants.

The tenant stated that because rent is paid that the notice to end tenancy is no longer valid.

The landlord's agent stated that the rent was not paid within five days as required and they were not reinstating the tenancy. The agent stated that the tenants have not paid rent for May 2015. The landlord seeks an order of possession and a monetary order for unpaid rent for May 2015, in the amount of \$2,000.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenants admitted rent was not paid within 5 days after receiving the Notice. Although rent was paid by the end of April 2015, there is no evidence that the tenancy was reinstated as both parties had filed application for dispute resolution. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenant's application has been dismissed, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenants admit rent for May 2015, was not paid. I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of unpaid rent for May 2015, and the \$50.00 fee paid for their respective application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,050.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession and a monetary order. The landlord may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 14, 2015

Residential Tenancy Branch

