



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 the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord attended; the tenants did not attend the telephone conference call hearing.

The landlord gave evidence that he served only tenant "TJ" with his application for dispute resolution and a notice of hearing by leaving the documents with that tenant on April 10, 2015.

Based upon the submissions of the landlord, I find the tenant TJ was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in that tenant's absence. As the landlord has not presented evidence that the other tenant, "KC", was served with his application as required by section 89 of the Act, I excluded that tenant from any further consideration in this matter.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord did not submit a copy of a written tenancy agreement and his testimony was that this tenancy began on April 1, 2015. The landlord then stated that the tenants moved into the rental unit on March 12, 2015. It appeared from the landlord's testimony that the monthly rent obligation of the tenants was \$900.00.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), which was not dated, but was said by the landlord to be hand delivered to either TJ or KC on April 3, 2015.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord then stated that the tenants paid the rent in full on April 9, 2015, and paid the rent for May 2015 on time.

In response to my question, the landlord could not confirm that he informed the tenants or otherwise communicated to them that he intended to still seek the end of the tenancy.

The landlord's relevant documentary evidence included, but was not limited to, a copy of a receipt, dated April 1, 2015, reflecting payment of \$900.00 for rent of the listed rental unit.

Analysis

In the case before me, I find the landlord provided confusing and contradictory evidence as to the rent payments of the tenants. For instance, he stated that the tenants paid full rent for April on April 9, 2015, but his documentary evidence, a receipt signed by the landlord, shows that the rent of \$900.00 for April was paid by the tenants on time on April 1, 2015.

Without convincing evidence, I do not find the landlord can support that the tenants did not make their rent payment on time or within the 5 days after service of the Notice

allowed under section 46(4) of the Act to make the rent payment. I also find that the landlord cannot support that any rent was owed at the time the Notice was issued.

I therefore find that the landlord's submitted insufficient evidence to support his application for an order of possession for the rental unit under section 46 of the Act, and I therefore dismiss his request for the order of possession.

Likewise, I dismiss the landlord's request for unpaid rent as the landlord confirmed the tenants are current in their rent through the date of the hearing.

I also decline to award the landlord recovery of his filing fee.

Conclusion

Due to the above, the landlord's application for an order of possession and monetary order for unpaid rent is dismissed, without leave to reapply.

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 25, 2015

Residential Tenancy Branch

