



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD

Introduction

This hearing was scheduled pursuant to a decision issued by an Adjudicator on April 16, 2015 in relation to the landlord's Application for an Order of Possession and Monetary Order for unpaid rent for April 2015 under the Direct Request procedure. The landlord was required to serve the Adjudicator's decision and Notice of Hearing upon the tenants. At the hearing, only the landlord appeared. With respect to service of the Adjudicator's decision and Notice of Hearing, the landlord testified that he served the male tenant with the documents on April 24, 2015.

The landlord testified that he confirmed with the male tenant by way of a telephone call on June 1, 2015 that the tenants continue to occupy the rental unit.

As the female co-tenant had not been served with notice of this hearing, I excluded her as a named party to this dispute and proceeded against the male tenant only.

The landlord requested that his monetary claim be amended to include loss of rent for May and June 2015 since the tenant continues to occupy the rental unit and has not paid rent for those months. Having heard the tenant continues to occupy the rental unit I was satisfied the tenant has benefited from use of the rental unit and found the landlord's requests for amendment non-prejudicial to the tenant and I amended the application accordingly.

The landlord also requested authorization to retain the security deposit and pet damage deposit in partial satisfaction of the loss of rent. As this request would reduce any Monetary Order issued with this decision I found this request non-prejudicial to the tenant and I amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

This month-to-month co-tenancy commenced on February 1, 2015 and the landlord collected a security deposit of \$400.00 and a pet damage deposit of \$200.00. The tenants are required to pay rent of \$800.00 on the 1st day of every month. The tenants failed to pay rent for April 2015 when due and on April 3, 2015 the landlord attended the property with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The landlord testified that when he knocked on the rental unit door the tenants would not come to the door but that an adult friend of the tenants (referred to by the initial "A" in this decision) did. The landlord handed this person both pages of the Notice. The landlord stated that "A" is an adult and was a guest of the tenants but that "A" did not reside at the rental unit. The landlord testified that two days later he returned to the property and spoke with both co-tenants and confirmed with them that they had received the Notice.

The Notice indicates rent of \$800.00 was due on April 1, 2015 and has a stated effective date of April 12, 2015. The tenants did not file to dispute the Notice. Rather, I heard that the tenant made repeated promises to pay the outstanding rent but did not follow through on those promises. Eventually, on May 8, 2015 the landlord received a cheque from Income Assistance in the amount of \$375.00 and the balance of the outstanding rent in cash from the tenants. The landlord accepted the payment toward the outstanding rent for April 2015 and gave the tenants a document indicating he was accepting the payment for use and occupancy only.

The landlord testified that he has not received any payment of rent for May or June 2015 despite the tenant's promises to pay.

The landlord seeks an Order of Possession based upon the Notice since the tenants have failed to pay any more rent and the landlord seeks to recover loss of rent for May and June 2015.

Documentation provided for my review includes: the tenancy agreement; the 10 Day Notice; and a signed Proof of Service of the 10 Day Notice indicating the 10 Day Notice was given to "A" at the rental unit and that "A" is an adult.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Service of a 10 Day Notice is to be done in one of the ways permitted under section 88 of the Act. Section 88 permits a 10 Day Notice to be served upon an adult who apparently resides with the tenant. In this case, the person who received the 10 Day Notice at the rental unit on April 3, 2015 did not reside with the tenants meaning service did not comply with section 88 of the Act. However, section 71 of the Act permits to me to deem a party sufficiently served even if service did not occur by one of the ways required by section 88. Considering the landlord returned to the property on April 5, 2015 to confirm with the tenants that they received the 10 Day Notice, I am satisfied the tenants received the 10 Day Notice and I deem the tenants sufficiently served with the 10 Day Notice as of April 5, 2015. As the 10 Day Notice has been deemed to be received by the tenants as of April 5, 2015, the effective date of the Notice automatically changes to read April 15, 2015 pursuant to section 53 of the Act

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on April 15, 2015. I am further satisfied that the payment of the outstanding rent on May 8, 2015 did not reinstate the tenancy based upon the landlord's testimony that he indicated on a receipt that the payment was accepted for use and occupancy only.

In light of the above, I find the landlord is entitled to regain possession of the rental unit and I provide to the landlord an Order of Possession effective two (2) days after service upon the tenant.

As rent has since been paid for April 2015 I make no award for unpaid rent for April 2015. However, considering the tenants continue to occupy the rental unit I find the landlord has suffered loss of rent for the month of May 2015 and I grant his request to recovery this loss from the tenant. Given the date of this decision and considering the landlord has been provided an Order of Possession with this decision, I further award

the landlord loss of rent for one-half of June 2015 by way of this decision. Should the landlord suffer further loss of rent due to the actions of the tenants the landlord is at liberty to file another Application for Dispute Resolution to claim such losses.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the landlord's loss of rent.

Given the above, the landlord is provided a Monetary Order to serve upon the tenant and enforce as necessary, calculated as follows:

Loss of Rent: May 2015	\$ 800.00
Loss of Rent: June 1 - 14, 2015	400.00
Less: security deposit & pet damage deposit	<u>(600.00)</u>
Monetary Order	\$ 600.00

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been awarded loss of rent for the period of May 1 – June 14, 2015 by way of this decision. The landlord has been authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of loss of rent and a Monetary Order for the balance of \$600.00 to serve and enforce as necessary. Any loss of rent incurred from June 15, 2015 onwards that result of the tenant's actions may be claimed by the landlord by way of another Application for Dispute Resolution.

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: June 03, 2015

Residential Tenancy Branch

