



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession for unpaid rent;
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 July 9, 2015).

Both parties appeared, gave affirmed 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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

Preliminary matters

At the outset of the hearing the landlord requested to amend their application to include unpaid rent for June, July, August and September 2015. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlords' application is amended to include subsequent unpaid rent.

Issues to be Decided

Should the Notice to end tenancy be cancelled or upheld?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of their claim?

Background and Evidence

The parties agreed the tenancy began April 2015. Rent in the amount of \$765.00 was payable on the first of each month. A Security deposit of \$338.00 was paid by the tenants.

The parties agreed the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 9, 2015, with a vacancy date of July 18, 2015.

At the out of the hearing the tenants indicated that they are not disputing the ending of the tenancy as they have found new rental accommodation and that tenancy starts on September 24, 2015.

The landlord testified that they want the tenants out early than the 24^h as they have not paid any rent for June, July, August and September 2015. The landlord seeks a monetary order for unpaid rent in the amount of \$3,060.00 and an order of possession..

The tenant SC testified that they paid rent for June 2015, in cash. However the landlord did not issue a receipt. The tenant SC acknowledged no further rent was given to the landlord.

The landlord testified that the tenants did not pay rent for June 2015. The landlord stated that they told the tenants if they were out of the rental unit by July 1, 2015, they would not pursue loss of rent for June; however, the tenants did not move and have paid no further rent.

The landlord indicated in a letter issued on July 5, 2015 that the tenants could pay a daily rent of \$25.50 (765 divided by 30 =25.50), if they would leave as they continue to delay their moving date.

Analysis

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

In this, case I find the tenants have not paid the outstanding rent that was listed in the Notice.

I find that the landlords are 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.

The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Further, I accept the landlords version that rent was not paid for June 2015. The evidence of the tenants was that June 2015, rent was paid in cash. However, I note in the tenant's

application they note that the landlord did not want rent. I find if rent was paid for June 2015, as June rent was an issue, it would have been reasonable for that important information to be disclosed in their application. Rather than to indicate that the landlords simply did not want rent.

Further, I find any daily rate agreement has expired as the tenants did not move nor did they pay the daily rate in the agreement and it was also not signed by the tenants.

I find that the landlords have established a total monetary claim of **\$3,110.00** comprised of unpaid rent for June, July, August and September in the amount of \$3,060.00 and the \$50.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$338.00 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due **of \$2,772.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application to cancel the Notice is dismissed.

The landlords are granted an order of possession. The landlords are granted a monetary and may keep the security deposit in partial satisfaction of the claim and are granted an 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: September 17, 2015

Residential Tenancy Branch

