



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MN

Introduction:

This was an application by the landlord for orders as follows:

- a) To obtain a monetary order for unpaid rent;
- b) To obtain an Order of Possession pursuant to sections 46 and 55; and
- c) To recover filing fees for this application.

This was also an application by the tenant to cancel a Notice to End the Tenancy for non-payment of rent dated June 29, 2015. Both parties were present at the hearing.

SERVICE:

The landlord said he served the Notice to End Tenancy personally on both tenants. They denied receipt and their witness employer said the male tenant was at work during daylight hours from approximately 8 to 5 p.m. on the day of alleged service. The landlord said he served them at 7:30 p.m. but was unable to produce any witness to the service and the tenants denied receiving the documents. The landlord agreed he received the tenant's application by personal service. I dismiss the landlord's application for lack of proof of service.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began February 2015, rent was to be \$1300 and a security deposit of \$675 was paid. The landlord said the tenants paid only \$700 in April, 2015 and no rent since then.

The tenants said they had a verbal agreement with the landlord to do repairs and deduct them; they said the roof alone cost \$6,000. They said there is no tenancy agreement and no written agreement regarding rent and deductions. The landlord said some repairs were done by the tenants and they were not charged rent for March and half of April 2015 in recognition of this and receipts were written. The landlord said they had been compensated as agreed but have not paid rent subsequently. The tenants agreed they have not been paying the rent.

Analysis:

The Notice to End Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice and he may have a potential monetary claim against the landlord, there is insufficient evidence that he had valid reasons to withhold his rent. No evidence of the necessity of emergency repairs pursuant to section 33 or of the landlord's agreements to deductions from rent was provided. Section 26 of the Act provides that a tenant must pay rent when due, whether or not the landlord is fulfilling his obligations under the Act. Therefore, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy ended on July 9, 2015 pursuant to the Notice to End Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession.

As explained to the landlord in the hearing, the onus of proof of service of the Application is on him and he was unable to provide any supportive evidence of his allegation of personal service. I dismiss the Application of the landlord. As the tenant's application is dismissed, the landlord obtained an Order of Possession effective two days from service. I give him leave to reapply for a monetary order for monies owed to him by the tenants within the legislated limitation periods.

Conclusion:

The landlord's application is dismissed with leave to reapply for a monetary order within the legislated time limits. No recovery of the filing fee is ordered due to lack of success.

The tenants' application is dismissed. No filing fee was paid. I grant the landlord an Order for Possession effective two days from service.

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 04, 2015

Residential Tenancy Branch

