



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF, CNR

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent and/or for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with their notice of hearing package in person on May 12, 2016. Both parties confirmed that the tenants served the landlords with their notice of hearing package in person on May 11, 2016. As such, I find that both parties have been properly served with the notice of hearing packages as per section 89 of the Act and are deemed to have been properly served as per sections 90 of the Act.

The landlord, D.T. (the landlords) provided testimony that one evidence package was submitted to the Residential Tenancy Branch, but that no evidence was served to the tenants. The tenant, T.S.P. (the tenants) confirmed that no evidence was received from the landlords nor have the tenants filed any documentary evidence. As such, I find that the landlords have failed to properly serve the tenants with the submitted documentary evidence as per section 88 of the Act. The landlords' documentary evidence shall be excluded having failed to comply with section 88 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent or for cause?

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

Are the tenants entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy began on November 1, 2015. The monthly rent is \$1,700.00 payable on the 1st day of each month and a security deposit of \$850.00 was paid on October 22, 2015.

Both parties confirmed that the landlords served the tenants with a 10 Day Notice dated May 6, 2016 which states that the tenants failed to pay rent of \$1,700.00 that was due on May 1, 2016. The 10 Day Notice also displays an effective end of tenancy date of May 16, 2016.

The landlords provided affirmed testimony that tenants failed to pay rent of \$1,700.00 for May 2016. The tenants confirmed that no rent was paid for May or June of 2016. The tenants stated that an agreement was made with the landlord to pay \$700.00 on the 7th of the month and \$1,000.00 on the 20th of the month. The landlords disputed that no such agreement was made as there is a signed tenancy agreement which states that rent is due on the 1st day of each month. The tenants stated that the agreement was made via text message. The tenants also stated that after receiving the 10 Day Notice on May 6, 2016, the tenants attempted to pay the rent, but was refused by the landlords. The landlords disputed this claim stating that after receiving the 10 Day Notice the tenants filed an application for dispute instead of paying the rent within the allowed 5 day period.

Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants did not provide sufficient evidence that they were entitled to pay rent of \$700.00 on the 7th and \$1,000.00 on the 20th of the month as a result of an agreed payment plan. Both parties confirmed that rent of \$1,700.00 was normally due on the 1st day of each month.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlords provided testimony that the tenants failed to pay rent of \$1,700.00 for May and \$1,700.00 for June of 2016. The tenants admitted that they did not pay May and June rent totalling, \$3,400.00.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice issued May 6, 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. The landlords' application is granted. As the effective date of the 10 Day Notice of May 16, 2016 has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenants admitted that the landlord has not received any rent for May and June. I find that the landlords are entitled to this amount. I issue a monetary order in the landlords' favour in the amount of \$3,400.00, to enable the landlords to recover unpaid rent from the tenants.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$3,500.00.

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 08, 2016

Residential Tenancy Branch