



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to a 10 Day Notice to End Tenancy For Unpaid Rent, and for a monetary order for unpaid rent.

The Tenants filed an Application requesting to cancel a 10 day Notice To End Tenancy for Unpaid Rent, and to cancel a 1 Month Notice To End Tenancy for Landlord’s Use Of Property.

Both parties appeared at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent?
- Is the Landlord entitled to an order of possession based on the Notice to end tenancy for cause?

Background and Evidence

The Landlord and Tenants testified that the tenancy commenced in the middle of March 2016, as a month to month tenancy. Rent in the amount of \$950.00 was due on the last day of each month. The Tenants paid a security deposit of \$475.00 to the Landlord.

The Landlord testified that the Tenants were having constant arguments with yelling and screaming in the first five weeks of the tenancy. The Landlord testified that the Tenant's did not pay rent when it was due on April 30, 2016.

The Landlord testified that he issued the Tenants the following three Notices to End Tenancy, on the following dates:

- 1 Month Notice To End Tenancy For Cause on April 30, 2016.
- 10 Day Notice To End Tenancy for Unpaid Rent or Utilities on May 1, 2016
- 10 Day Notice To End Tenancy for unpaid rent or Utilities on May 4, 2016

The Landlord testified that he served the Tenants with a 1 Month Notice to End Tenancy for Cause on April 30, 2016. The Landlord testified that he issued a 10 Day Notice To End Tenancy For Unpaid Rent on May 1, 2016, by putting a copy of the Notice in the Tenants mailbox. With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 4, 2016, the Landlord testified that he posted that Notice on the Tenant's door at 3:00 p.m. on May 4, 2016. The Landlord testified that the Tenants were home on May 4, 2016. He testified that he observed that the Notice was removed from the Tenants door later in the evening on May 4, 2016.

The Tenants testified that they received the 1 Month Notice to End Tenancy For Cause on March 30, 2016. The Tenants did not provide an explanation on why they did not pay the rent that was due on the same day.

The Tenants testified that they did not receive the 10 Day Notice To End Tenancy dated May 1, 2016, that was put in the mailbox because they did not know that they had a mailbox.

The Tenants initially testified that they received the 10 Day Notice To End Tenancy that is dated May 4, 2016, on May 5, 2016, but changed their testimony by stating they went out of town on May 4, 2016, and that a friend was in the rental unit caring for their cat. The Tenants testified that they found the 10 Day Notice dated May 4, 2016, taped to their door when they returned to the rental unit on May 8, 2016.

The Landlord testified that the Tenants sent him a text message on May 7, 2016, that the Tenant wanted to pay the rent. The Landlord submits that on May 8, 2016, he met with the Tenant B.R. who offered to pay the rent if the Landlord would rescind the 1 Month Notice To End Tenancy For Cause. The Landlord states that he refused to

agree to rescind the 1 Month Notice for Cause. The Landlord submits that the Tenant then refused to pay the rent and walked away.

The Tenants submit that the Landlord would not take the rent payment and just wants them out.

The Tenants testified that they have not paid the Landlord rent for May 2016, or June 2016. The Tenants testified that the rent money is in their bank account.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,900.00, for the months of May 2016 and June 2016.

Analysis

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act, the regulations or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, and the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenants have not paid rent for the Months of May 2016, and June 2016.

I find that the Tenants did not pay their rent when it was due on March 30, 2016, after they received the 1 Month Notice To End tenancy from the Landlord. The Tenants state that the Landlord refused to accept the rent. I prefer the Landlord's evidence that the Tenants did not pay the rent when it was due, and the Tenants refused to pay the rent on May 8, 2016, when the Landlord would not rescind the 1 Month Notice to End Tenancy for Cause. I found the Landlord's testimony and evidence to be detailed, and internally consistent.

I find that the tenancy has ended due to unpaid rent. Since the tenancy has ended based on the 10 Day Notice To End Tenancy for Unpaid Rent dated May 4, 2016, there is no need to consider the other two Notices to End Tenancy issued by the Landlord.

The Landlord is 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 Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenants owe the Landlord \$950.00 for May 2016, rent. I also find that the Tenants have not paid rent for the month of June 2016, and the Landlord will suffer a loss of rent for this month. The Tenants are aware that they are required to pay rent each month and therefore, pursuant to section 64 of the Act, I allow the Landlord's claim to be amended to include one additional month of rent in the amount of \$950.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord is successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,000.00 comprised of \$1,900.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I find that the Tenants have not paid rent for the Months of May 2016, and June 2016, and did not pay the outstanding May 2016, rent within five days of receiving the Notice.

The Landlord is granted an order of possession and I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2,000.00.

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 09, 2016

Residential Tenancy Branch