



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The application has been amended, with consent, to correctly spell the tenant's first name.

The parties were in agreement that at the commencement of the tenancy there were two co-tenants for the rental unit. The male co-tenant was in attendance at the hearing even though the landlord had only named and served the female co-tenant with the hearing documents. The parties were also in agreement that the male co-tenant moved out of the rental unit in May 2016 while the female co-tenant remained. Although the male tenant did not end the tenancy in a manner that complies with the Act, the landlord has only pursued the female tenant under this Application, which the landlord is entitled to do with respect to co-tenants since co-tenants are jointly and severally liable for debts owed to the landlord. As the tenants were informed during the hearing, it is up to the co-tenants to apportion any debts to the landlord among themselves and any dispute between them must be resolved in the appropriate forum.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy agreement started February 15, 2016. The tenants paid a security deposit of \$600.00. The tenants were required to pay rent of \$1,200.00 on the first day of every month.

The landlord testified that the written tenancy agreement was not signed by the tenants but that the male tenant initialled the agreement. The female tenant testified that the tenancy agreement was signed by the tenants.

On May 2, 2016 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent to the male tenant via registered mail. The 10 Day Notice indicates rent of \$1,200.00 was outstanding as of May 1, 2016 and has a stated effective date of May 18, 2016. The registered mail was returned to the landlord.

I heard from the male tenant that on May 4, 2016 the female tenant kicked him out of the rental unit and he has been working out of town since then. The male tenant acknowledged that he did not inform the landlord of this until text messages and phone calls were made on or about May 11, 2016 and May 13, 2016. Neither tenant gave the landlord a written notice to end tenancy.

On May 26, 2016 the male tenant e-transferred a \$400.00 payment to the landlord. On May 27, 2016 the landlord had his agent issue a receipt for payment of \$400.00 and it was given to the female tenant. The receipt indicates that it was accepted "for use and occupancy only". The receipt indicates that a balance of \$200.00 was outstanding. The landlord stated that the amount of \$200.00 was a typographical error and should have read \$800.00.

The landlord seeks to regain possession of the rental unit as soon as possible so that he may re-rent the unit. The landlord also seeks to recover unpaid rent of \$800.00 for the month of May 2016 and loss of rent of \$1,200.00 for the month of June 2016 since the female tenant has not yet moved out.

The female tenant acknowledged that she continues to occupy the rental unit and has not paid rent for June 2016. As to rent owing for May 2016 the female tenant pointed to the receipt as evidence that only \$200.00 was an outstanding for May 2016. The tenants did not produce any other evidence as to payments made for May 2016.

The female tenant also submitted that when the landlord was informed that the male tenant had moved out, the landlord or landlord's agent took her name off the tenancy

agreement and left the male tenant's name in error. Then the landlord wanted her to sign a new tenancy agreement which she did not do.

The tenants questioned how the rent could be payable on the first day of the month when their tenancy started on February 15, 2016 and they paid rent of \$1,200.00 for the month of February. Both parties provided consistent testimony that the rental unit was supposed to be ready as of February 1, 2016 but it was not so the landlord provided them with use of a different rental unit for the first two weeks of February 2016. The tenants argued that the other unit was a less valuable unit that rents for \$900.00 per month. The landlord responded by acknowledging that the other unit does rent for \$900.00 per month but that he had not been prepared to address this issue and could not confirm the amount of rent paid by the tenants in February 2016 without all of his records in front of him. Having heard the tenants have had use of another unit for the first part of February 2016 I found that the tenants paid pro-rated rent of \$600.00 for the rental unit for the second half of February 2016 and that rent was payable on the first day of every month thereafter. I further informed the tenants that if they paid more in rent than the value of tenancy provided in the first two weeks in February 2016 they are at liberty to resolve that issue with the landlord and if they cannot reach a resolution the tenants may file their own Application for Dispute Resolution to seek recovery of any overpayment for that other unit.

During the hearing, I orally provided my findings that the tenancy was at an end for unpaid rent. The parties proceeded to negotiate an effective date for the Order of Possession. The parties agreed upon a vacate date of July 5, 2016.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Pursuant to the definition of a tenancy agreement provided under section 1 of the Act, a tenancy agreement is an agreement between a landlord and a tenant respecting possession of a rental unit, whether the agreement is written or oral, express or implied. In this case, I was not provided a copy of a written tenancy agreement and the parties provided conflicting testimony as to whether one was signed by the tenants. However, upon hearing from both parties, I am satisfied that both co-tenants entered into a tenancy agreement with the landlord for possession of the rental unit in exchange for payment of \$1,200.00 in rent on the first day of every month.

The landlord asserts that the tenants failed to pay rent when due on May 1, 2016 and I find the tenants did not provide sufficient evidence to contradict the landlord's position.

Since it is very difficult to prove a negative, I find the burden to prove rent was paid for May 2016 is upon the tenants.

Where a tenant does not pay rent the landlord is at liberty to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. Where there is a co-tenancy, it is sufficient to serve a Notice to End Tenancy upon one of the co-tenants.

Having heard the male tenant was still residing at the rental unit on May 2, 2016 when the landlord mailed the 10 Day Notice and the tenants had not informed the landlord that the tenancy was ending or the male tenant had moved out until mid-May 2016, I find the landlord had a legal entitlement to receive the rent for May 2016 from one or both tenants and the landlord acted reasonably by sending the 10 Day Notice to the male tenant on May 2, 2016 at the rental unit rental unit address.

Where a document is mailed to a party using their address of residence at the time of mailing, section 90 deems the recipient to have received the document five days after mailing. Accordingly, I find the landlord sufficiently served the 10 Day Notice upon the tenants and it is deemed to have been received by the tenants five days later, on May 7, 2016 even though it was unclaimed and returned to sender.

Under section 46(5) of the Act, a tenant has five days to pay the outstanding rent or file to dispute a 10 Day Notice within five days of receiving a 10 Day Notice. If the tenant does not, 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.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of May 7, 2016 I find the tenancy ended on the stated effective date of May 18, 2016 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective July 5, 2016 as agreed upon by the parties during the hearing.

As for the landlord's monetary claim for unpaid and/or loss of rent, I accept that the receipt issued on May 27, 2016 is for the e-transfer made by the male tenant on May 26, 2016 in the absence of any other evidence from the tenants that they paid any other amount. Therefore, I accept the landlord's submission that rent of \$800.00 remains outstanding for May 2016 and I award the landlord that amount.

Since the female tenant has continued to reside in the rental unit I further award the landlord loss of rent in the amount of \$1,200.00 for the month of June 2016.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the female tenant, calculated as follows:

Unpaid Rent: May 2016	\$ 800.00
Loss of Rent: June 2016	1,200.00
Filing fee	100.00
Less: security deposit	<u>(600.00)</u>
Monetary Order	\$1,500.00

Conclusion

The landlord has been provided an Order of possession effective on July 5, 2016. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,500.00 to serve and enforce upon the tenant.

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 30, 2016

Residential Tenancy Branch