



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR, MND, MNDC, FF, CNR

Introduction

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

The Landlords filed an Application requesting an order of possession; to recover unpaid rent and /or utilities; for compensation for damage to the unit; for compensation for damage or loss under the Act; and to recover the cost of the filing fee.

The Tenants filed to cancel 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided 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 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.

Preliminary and Procedural Matters

The Tenant M.M. appeared at the hearing but the Tenant J.M. who filed the cross application did not. The Tenant M.M. testified that he was not aware that the co-Tenant J.M. had filed for dispute resolution. M.M. testified that he moved out of the rental unit on January 23, 2016, but continued to pay the rent until June 1, 2016, at which time he put a stop payment on the rent payments. The Tenant M.M. testified that there is a no contact order in place prohibiting him from contacting the co-Tenant.

The Landlords testified that the Tenant J.M. never served the Landlords with a Notice of Hearing regarding the Tenant's Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlords testified that the Tenant J.M. is still living in the rental unit. The Landlords have applied for compensation due to damage to the rental unit. Since the Tenant is still living in the unit, and since the Landlords have not provided a breakdown of the claim for damage, the Landlord's claim is severed from their Application with leave to reapply at a later date.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy began on January 1, 2016, as a one year fixed term tenancy that could continue thereafter as a month to month tenancy. Rent in the amount of \$1,350.00 is due on the first day of the month. The Tenants paid the Landlords a security deposit of \$625.00.

The Landlords testified that the Tenants did not pay the rent when it was due for the month of June 2016.

The Landlords issued three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities as follows:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 12, 2016
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2016
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2016

The Landlord D.R. testified that she handed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 12, 2016, to the Tenant D.R. on June 12, 2016. The Notice states the Tenants must move out of the rental unit on June 22, 2016.

The Landlords believed that they also needed to serve the co-Tenant with a Notice, so they completed another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2016, and served it in person to the co-Tenant M.M. on June 16, 2016.

When the rent for July 2016, was not paid, the Landlords issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2016, and served it to the Tenant's by posting it on the Tenant's door on July 4, 2016.

The 10 Day Notices inform the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenants disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 12, 2016, but they did not dispute the other two 10 Day Notices.

The Landlords testified that on June 12, 2016, the Tenant J.M. paid \$650.00 towards June 2016, rent but the outstanding amount of \$700.00 was not paid. The Landlords testified that July 2016, rent in the amount of \$1,350.00 was also not paid. The Tenant M.M. testified that he did not pay any rent for June 2016, or July 2016. The Tenant M.M. testified that he has no legal reason for withholding the rent, and is not aware of any reason why the co-Tenant withheld paying the rent.

The Landlords are seeking an order of possession and a monetary order for unpaid rent in the amount of \$2,050.00.

Analysis

Based on the evidence before me, and the testimony of the Landlords and Tenant, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 12, 2016. I find that the tenancy has ended.

I find that 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 Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlords \$700.00 for June 2016, rent. I also find that the Tenants owe the Landlords \$1,350.00 for July 2016 rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were successful in their claim, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlords have established a total monetary claim of \$2,150.00 comprised of \$2,050.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlords for this hearing. 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 failed to pay the rent and had no authority to withhold payment of the rent. The tenancy has ended.

The Landlord is granted an order of possession effective after two days service on the Tenants, and I grant the Landlords a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2,150.00.

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: July 27, 2016

Residential Tenancy Branch

