



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

OPR, MNR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and a monetary Order for unpaid rent.

The landlord initially applied via Direct Request Proceeding, an ex parte process. On June 21, 2016 an interim decision was issued adjourning the application to this participatory hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant's counsel said that the female tenant received the hearing documents that were given to a person who lives in the lower level of the home. Counsel had no information on service to the male respondent and had taken instructions from the female respondent only. There was no dispute regarding service of the hearing documents or evidence.

The landlord said that she gave the hearing documents to a male who lives in the lower level of the home and that he then gave the documents to the female respondent. The landlord had no evidence of service to the male respondent. Therefore, I determined that the application would be amended to remove the male respondents' name.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Mutually Settled Agreement

After over one hour of testimony it was mutually agreed that the 10 day Notice to end tenancy for unpaid rent issued on May 13, 2016 would be canceled. It was apparent that the sums of rent indicated as owed on the Notice did not align with the sums provided in the landlord's evidence.

The landlord and legal counsel agreed to meet on August 11, 2016 at 9 a.m. in order to review banking records in an attempt to reach agreement on the sum of rent, if any, owed. The landlord will take all records with her and counsel will have all available records from the tenant.

The parties agreed to the terms of the tenancy agreement supplied as evidence regarding rent owed in the sum of \$2,500.00 per month.

Findings

Section 63 of the Act provides:

Opportunity to settle dispute

63 (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

Therefore, in support of the mutually settled agreement I find and order that the 10 day Notice to end tenancy for unpaid rent issued on May 13, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The landlord is at liberty to issue another 10 day Notice to end tenancy for unpaid rent should the parties not reach agreement on payment of any rent owed.

The claim for unpaid rent is dismissed with leave to reapply.

During the hearing the due date of rent was discussed. The landlord acknowledged that rent has been paid at different times during the month, on no particular date. The tenancy agreement supplied as evidence indicated that rent is due on "1 Dec;" with no specific term, such as month, selected. Counsel did not disagree that the term reasonably points to a rent due date of the first day of each month.

Therefore, pursuant to section 62(3) of the Act I find and order that rent be paid in full on the first day of each month. Effective August 1, 2016 rent must be paid in that manner.

Conclusion

The parties reached a mutually settled agreement to cancel the 10 day Notice to end tenancy for unpaid rent issued on May 13, 2016.

I have ordered that the 10 day Notice ending tenancy for unpaid rent issued on May 13, 2016 is cancelled.

Rent is due on the first day of each month.

The claim for unpaid rent is dismissed with leave to reapply.

This final decision should be read in conjunction with the interim decision issued on June 21, 2016.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2016

Residential Tenancy Branch