



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications. The tenants filed to dispute a 10 Day Notice to End Tenancy for Unpaid rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. I heard that the landlord had served each tenant with a copy of the landlord's hearing package via registered mail sent within three days of filing. The female tenant confirmed that each co-tenant was sent a registered mail package and that she was representing both tenants as the male tenant was working. The landlord confirmed that he was personally served with the tenant's hearing package. Both parties 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 landlord withdrew his request for a Monetary Order during the hearing since the security deposit offsets the amount of rent currently outstanding. Accordingly, I do not provide a Monetary Order to the landlord with this decision.

I noted that the parties had identified the rental unit using different initials on their respective applications. Both parties were in agreement that the tenants occupy the upper living unit. The landlord requested that the application be amended to reflect the rental unit as being the "upper" unit. The tenant did not oppose this request and I amend the applications accordingly.

Issue(s) to be Decided

Is there a basis to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or should it be upheld? If upheld, is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy started June 1, 2016 and the tenants paid a security deposit of \$525.00. The written tenancy agreement indicates that the monthly rent is \$1,200.00 due on the fifth day of every month. Both parties provided consistent testimony that the amount of \$1,200.00 was to include cable and internet; however, the parties agreed to amend the terms of tenancy so that the tenants would pay rent of \$1,050.00 and obtain their own cable and internet service. Accordingly, both parties were in agreement that the tenants' monthly rent obligation was \$1,050.00 due on the fifth day of every month.

It was undisputed that the tenants failed to pay rent that was due on July 5, 2016 and the landlord served the tenants with a 10 Day notice to End Tenancy for Unpaid Rent. The 10 Day Notice was posted to the door of the rental unit and left in the tenants' mailbox on July 6, 2016. The 10 Day notice indicates that rent of \$1,050.00 was outstanding as of July 5, 2016 and has a stated effective date of July 15, 2016. The tenant submitted that she received the 10 Day Notice on July 7, 2016 and she commenced action to dispute it the same day.

The tenant submitted that the reason rent was not paid when due is because they had spent money travelling to another city to visit her grandmother in the hospital. The tenant submitted that they requested an extension to pay the rent from the landlord but the landlord would not grant them an extension. Rather, he demanded that they pay the rent by midnight on July 5, 2016 or he would serve them with a 10 Day Notice, which he did.

I heard consistent testimony that on July 20 or 21, 2016 the tenants e-transferred \$1,050.00 to the landlord for payment for July's rent. I heard consistent testimony that on August 20 or 21, 2016 the male tenant sent the landlord \$525.00 toward August 2016. The tenant testified that she also tried sending an e-transfer to the landlord for August 2016 rent but it was unsuccessful. Both parties were in agreement that as of today's date the landlord is owed \$525.00 for unpaid and/or loss of rent for August 2016. The landlord seeks to retain the security deposit in satisfaction of this amount.

As for the Order of Possession, the landlord seeks an Order of Possession effective as soon as possible. The tenant indicated that she has three children and would like to stay.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement unless the tenant has a legal right to withhold rent. The inability to pay rent is not a legal basis to not pay rent under the Act. Although the tenants requested an extension to pay rent there is no obligation upon the landlord to grant an extension. Accordingly, when the landlord denied the tenants' request for an extension the tenants remained obligated to pay their rent, in full, by the end of day July 5, 2016.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice. The tenants did not pay the outstanding rent within five days of receiving the 10 Day notice on July 7, 2016.

Although the tenants filed to dispute the 10 Day Notice within five days of receiving the Notice, the tenants did not provide a legal basis for not paying the rent that was due. Therefore, I find there is no basis for me to cancel the 10 Day notice and I dismiss the tenants' application.

Having heard the tenants received the 10 Day notice on July 7, 2016 I find the effective date of the Notice should read July 17, 2016. As provided under section 53 of the Act, an incorrect effective date does not invalidate a Notice to End Tenancy but the effective dates automatically changes to comply. Therefore, I find the tenancy came to an end on July 17, 2016.

Since the landlord had put the tenants on notice that he intends to bring the tenancy to an end and regain possession of the Notice by serving them with his Application for Dispute Resolution, I am satisfied that in paying the outstanding rent on July 20 or 21, 2016 he did not act in such a way as to reinstate the tenancy. Accordingly, I find the landlord is entitled to an Order of Possession. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Considering the tenants remained in possession of the rental unit despite the tenancy ending in July 2016 and have only paid \$525.00 for the month of August 2016, I am satisfied the landlord has suffered a loss of rent for August 2016 in the amount of \$525.00. I authorize the landlord to retain the tenants' security deposit in satisfaction of the loss of rent the landlord has suffered for the month of August 2016.

Conclusion

The tenants' application has been dismissed. The landlord's request for an Order of Possession has been granted. The landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit in satisfaction of the landlord's loss of rent for the month of August 2016.

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: August 23, 2016

Residential Tenancy Branch