



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROS. HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that the tenants (A.G. and D.M.) were served with the notice of hearing package and the submitted documentary evidence in person on January 20, 2017. The tenants (A.G. and D.M.) confirmed service in this manner and that the tenants' mother accepted the package on their behalf. The landlord stated that the other two tenants (S.B. and N.H.) failed to provide any forwarding addresses and that the packages that were mailed to them at the rental premises were returned to the landlord as undelivered. The tenants submitted late documentary evidence which the landlord confirmed receipt. I accept the affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the end of the hearing the tenants provided a new mailing address for delivery of this decision.

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?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2016 on a fixed term tenancy for 1 year and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 1, 2016. The monthly rent is \$1,600.00 payable on the 1st day of each month. Both parties confirmed that the tenants paid an \$800.00 security deposit and a \$800.00 pet damage deposit.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,600.00.

The tenants (A.G. and D.M.) stated that they had vacated the rental premises on December 29, 2016 after giving notice to the landlord on December 7, 2016 that they would be vacating the premises on December 31, 2016. The tenants confirmed that rent for January 2017 was not paid. The landlord stated that the other two tenants (S.B. and N.H.) were contacted on January 1, 2017 to collect the monthly rent. The landlord provided undisputed affirmed testimony that these two tenants had refused to pay the January 2017 rent of \$1,600.00. The landlord has submitted a copy of letter from these two tenants which disputes that they should be responsible for the tenants (A.G. and D.M.) portion of the rent.

The landlord stated that the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2017 by posting it to the rental unit door on January 2, 2017. The 10 Day Notice states that the tenants failed to pay rent of \$1,600.00 that was due on January 1, 2017 and sets out an effective end of tenancy date of January 12, 2017. The landlord stated that no rent has been paid for January 2017 by any of the tenants as of the date of this hearing.

The landlord stated that they are not aware of when the tenants (S.B. and N.H.) had vacated the rental unit as no contact was made to inform them. The landlord confirmed that she now has possession of the rental premises and that the request for an order of possession is cancelled.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 12, 2017. However, as all of the tenants have now vacated the premises and the landlord has cancelled the request for an order of possession no further action is required.

The landlord has provided affirmed and uncontested testimony that the tenants have unpaid rental arrears totaling \$1,600.00 for January 2017. I also note that the tenants (A.G. and D.M.) provided notice to end the tenancy for all of the tenants on December 7, 2016 to end the

tenancy on December 31, 2016. However, the tenants (S.B. and N.H.) still occupied the rental premises as of January 1, 2017. I find that the tenants failed to provide 1 clear month's notice to end the fixed term tenancy. I also find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

In offsetting this claim, I authorize the landlord to retain the \$800.00 security deposit and the \$800.00 pet damage deposit in satisfaction of this claim.

Conclusion

The landlord has established a monetary claim of \$1,600.00 for unpaid rent. The landlord may retain the \$800.00 security and the \$800.00 pet damage deposits in satisfaction of this claim.

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: February 10, 2017

Residential Tenancy Branch