



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXIMUM INCOME PROPERTY MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, CNR, RP, OLC,

Introduction

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

On January 24, 2018, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee.

On January 15, 2018, the Tenants submitted an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; for a repair order; and for the Landlord to comply with the Act.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant, Mr. JR who is named in the Landlord's application appeared at the start of the hearing. The Tenants, Ms. CT and Ms. LC who applied to dispute the 10 Day notice to end tenancy were not present at the start of the hearing.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the tenancy ending due to unpaid rent and is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy initially began on April 15, 2014, as a fixed term tenancy. The Landlord and Tenant Mr. JR testified that after the brother of Mr. JR moved out of the rental unit, the Tenants Ms. CT and Ms. LC were added to the tenancy agreement as co-Tenants. The Landlord provided a lease document dated March 22, 2017, adding the names of Ms. CT and Ms. LC as Tenants for the rental property. The Tenant Mr. JR testified that they are co-tenants but they agree to live in separate areas of the house and each pay a portion of the rent.

The Landlord and Tenant testified that rent in the amount of \$2,488.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,175.00. The Landlord provided a copy of the tenancy agreements.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement owing for the month of January 2018. The Landlord testified that he received a rent payment of \$1,400.00 from Mr. JR but did not receive the remaining amount of \$1088.00 when it was due.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2018, ("the Notice").

The Landlord testified that the Tenants were served with the Notice by registered mail sent on January 5, 2018.

The Tenant, Mr. JR testified that the 10 Day Notice was received on January 8, 2018.

The 10 Day Notice contains the names of Ms. CT and Ms. LC. The Notice states that the Tenants have failed to pay rent in the amount of \$1,088.00 which was due on January 1, 2018. The Notice informed 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 Ms. CT and Ms. LC disputed the Notice within the required timeframe.

The Landlord testified that on January 16, 2018, the Tenants paid the amount of \$500.00 towards the outstanding balance of \$1,088.00. The Landlord testified that the Tenants still owe \$588.00 for January 2018, rent.

The Landlord is seeking an order of possession due to a fundamental breach of the tenancy agreement due to the non-payment of rent and is also seeking a monetary order for the unpaid rent.

The Landlord testified that in addition to the unpaid January rent, the Tenants have not paid all the rent owing for March 2018. The Landlord testified that he received \$1,400.00 from Mr. JR, and that a balance of \$1,088.00 remains outstanding.

In response, the Tenant, Mr. JR acknowledged that the rent has not been paid in full for the months of January 2018, and March 2018. Mr. JR stated that he paid his portion and that his co-tenants failed to pay their share.

As the hearing was about to end, the Tenants Ms. CT and Ms. LC called in at 1:58 pm. I introduced myself and identified who was present in the hearing and summarized the testimony and evidence that had been presented. They expressed surprise that their co-tenant Mr. JR was in attendance as they did not name him in their application.

The Tenants, Ms. CT and Ms. LC expressed that they have not had an opportunity to be heard and submitted that the focus of the hearing should be on the Landlord's failure to repair the unit and comply with the Act.

The Tenants, Ms. CT and Ms. LC were questioned on whether or not rent had been paid in full within 5 days of receiving the 10 Day Notice. The Tenants testified that January 2018, rent was not paid in full and that over \$500.00 is still owing. The Tenants stated that they reached an oral agreement with the Landlord that they could pay the rent late. The Tenants submitted that they do not have any proof of the oral agreement.

In response, the Landlord submitted that there was no oral agreement between the parties that permitted the Tenants to pay the January rent late and preserve the tenancy. He submitted that the Tenants have also failed to pay March 2018, rent. He submitted that the Tenants were aware he was proceeding with eviction due to non-payment of rent.

At the end of the hearing the Tenants Ms. CT and Ms. LC became argumentative and disruptive. Their call needed to be muted in order to proceed with concluding the hearing with the other participants. The Tenants Ms. CT and Ms. LC disconnected from the conference call at 2:13 pm.

Analysis

Section 26 of the Act provides that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act, the regulations

or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. Residential Tenancy Branch Policy Guideline # 3 Claims for Rent provides as a general rule, non-payment of rent is considered to be a fundamental breach of the Act or tenancy agreement.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

I find that the Tenants named in the Landlord's application are co tenants and are jointly and severally liable regarding their rights responsibilities and obligations under the Act, and a tenancy agreement.

I find that the Tenants are obligated to pay the rent of \$2,488.00 to the Landlord by the first day of each month.

I find that the Tenants did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice on January 8, 2018. I find that the Tenants did not have a legal right under the Act to withhold payment of rent. I find that the Tenants have fundamentally breached section 26 of the Act, and the tenancy agreement.

I do not accept the Tenants' submission that there was a verbal agreement between the parties permitting the Tenants to pay the rent late and continue living in the unit. There is insufficient evidence from the Tenants to support this suggestion.

I find that the Landlord is entitled to an order of possession for the rental unit, 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 Landlord \$588.00 for unpaid January 2018, rent. I also find that the Tenants owe the Landlord \$1,088.00 for unpaid March 2018, rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord is entitled to a monetary order in the amount of \$1,776.00. This monetary 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 all the rent due under the tenancy agreement within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2018.

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,776.00.

The Tenants request for a repair order was not heard because the tenancy has ended due to non-payment of rent. The Tenants are at liberty to apply for dispute resolution should they wish to pursue a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement for a loss of value of the tenancy.

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*.

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Dated: March 15, 2018

Residential Tenancy Branch