



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, CNC, LRE, LAC, FF

Introduction

In the first application the landlord seeks an order of possession pursuant to a mutual agreement to end the tenancy signed by one of the two tenants.

In the second application the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent received June 24, 2019. They also seek an order permitting them to change locks and to restrict the landlord's right of entry.

The tenant Ms. L.M. did not attend the hearing. The landlord Mr. J.C. testified that he personally served her with the Notice of Dispute Resolution Proceeding form on June 24, 2019. I find that she has been duly served.

The landlord submitted a monetary order worksheet as part of his documentation, appearing to claim unpaid rent for June and July as well as over \$3000.00 for missing appliances. I apologize for neglecting to raise this item during the hearing, but the landlord's application does not include a request for unpaid rent. Lacking a formal request in the application I am unable to deal with the landlord's monetary claim. He is free to make another application seeking a monetary award.

Issue(s) to be Decided

Has this tenant ended by operation of either the mutual agreement or the ten day Notice to End Tenancy for unpaid rent?

Background and Evidence

The rental unit is a two bedroom suite in a house containing three rental units. The landlord Mr. J.C. purchased the property in March 2019 and assumed the tenancy.

The tenancy had started in February 2019. There is a written tenancy agreement showing both respondents as tenants. The rent is \$1350.00 per month, due on the first of each month, in advance. The landlord holds a \$675.00 security deposit.

On June 13 the tenant Ms. L.M. informed the landlord that she was leaving and that Mr. M.C. had already left. The landlord prepared a mutual agreement to end the tenancy as of June 13. The agreement was in the standard form offered by the Residential Tenancy Branch. Only Ms. L.M. and the landlord signed it. He says he was surprised to then find that Mr. M.C. was still in the rental unit and that locks had been changed.

The landlord indicates that the washer, dryer and stove have gone missing from this rental unit. It appears Mr. M.C. may have reported them to the police as having been stolen.

The tenant Mr. M.C. says Ms. L.M. didn't tell him about her signing the mutual agreement to end tenancy.

He admits that he hasn't paid any rent since May and that the \$1350.00 June rent claimed in the ten day Notice was not paid. He feels he has a right to withhold rent because he is short some appliances.

Analysis

Unless a tenancy agreement states otherwise, tenants are considered to be joint tenants in their relationship with the landlord. Each is obliged to pay the whole rent and the whole rent may be collected in full from either (though they may demand a settling of accounts between themselves). Similarly, one tenant speaks for all. One tenant may end the tenancy of all.

Residential Tenancy Policy Guideline 13, "Rights and Responsibilities of Co-tenants" provides:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

Similarly, one tenant may sign a mutual agreement to end the tenancy and end it for all.

While Mr. M.C. did remain in the premises he did not "continue to pay rent" and so there was no new tenancy.

As a result this tenancy ended for both tenants on June 13, 2019 in accordance with the mutual agreement to end the tenancy.

If this analysis is proved to be wrong; if a new tenancy with Mr. M.C. began after Ms. L.M. left, it was quickly ended by the ten day Notice to End Tenancy received June 24. That Notice was a proper Notice and ended any possible tenancy by operation of s. 46 of the *Residential Tenancy Act* (the "*Act*").

The tenant's claim that he could withhold rent because he lacked appliances must fail. As s. 26 of the *Act* states, 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." The tenant Mr. M.C. did not make out any right under the Act to deduct all or a portion of rent.

Conclusion

This tenancy ended on June 13, 2019 by operation of the mutual agreement to end the tenancy. The tenants' application is dismissed. The landlord will have an order of possession.

The landlord is entitled to recover the \$100.00 filing fee for this application and I authorize him to recover it from the security deposit that he holds.

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 14, 2019

Residential Tenancy Branch