



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL -S; FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the security deposit.

The landlord's agents appeared at the commencement of the hearing; however, there was no appearance on part of the tenants. Since the tenants were not present, I explored service of hearing documents upon the tenants. The landlord's agent testified that the hearing documents were sent to each tenant, at the rental unit address, via registered mail on December 19, 2019. The landlord's agent confirmed the tenants are still residing in the rental unit. The landlord's agent orally provided two registered mail tracking numbers that I have recorded on the cover page of this decision. A search of the tracking numbers showed that the package addressed to the male tenant was delivered on January 6, 2020 and the other package was unclaimed.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the recipient refuses to accept or pick up their mail. I was satisfied the landlord met her burden to serve each tenant in a manner that complies with section 89 of the Act and the tenants were deemed to be served five days after mailing. Accordingly, I continued to hear from the landlord's agents without the tenants present.

Approximately 17 minutes into the hearing, the male tenant appeared. He stated he was unaware of the hearing until he received a text message from one of the landlord's agents. I summarized to the tenant the purpose of the hearing and the testimony I had heard to that point.

During the remainder of the hearing, the parties came to a mutual agreement that I have recorded by way of this decision.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed upon the following terms during the hearing:

1. The 10 Day Notice to End Tenancy for Unpaid Rent dated December 3, 2019 shall not be enforced and the tenancy continues at this time.
2. The written tenancy agreement reflects a joint tenancy and shall be enforced as such from this date forward.
3. The written tenancy agreement, as it was written, does not reflect a due date for the monthly rent payment and is amended to reflect that the monthly rent is due on the first day of every month.
4. It is recognized that the tenants are currently in rental arrears and with a view to preserving the tenancy at this time the parties agreed that:
 - a. The tenant shall pay at least \$300.00 to the landlord's agent tomorrow (January 29, 2020).
 - b. By the end of February 2020, the tenants shall satisfy the rental arrears in full, or enter into a mutually agreeable payment agreement. If a mutually agreeable payment arrangement is made, the agreement shall be recorded in writing by the landlord and signed by both parties and a copy given to the tenants.
5. Failure by the tenants to either satisfy the rental arrears or enter into a mutually agreeable payment plan by the end of February 2020 shall result in the landlord serving the tenants with a new 10 Day Notice to End Tenancy for Unpaid Rent.

In addition to the above, I impressed upon the tenant the need to pay rent when due under the terms of the tenancy agreement and that the inability to pay because one's health or personal financial circumstances is not a legal basis to not pay rent when due. Also, a 10 Day Notice, or any other eviction notice, is a legal document that carries serious ramifications if action is not taken within certain time limits. Further, since this is a joint tenancy agreement, the tenancy for both tenants may be ended where one tenant fails to pay their "share" of the rent. Finally, the management of this tenancy has been taken over by a property manager and the tenants' communications and rent payments should be directed to the landlord's agents in the future, until such time there is a change in management of the tenancy communicated to them. The tenant indicated he understood.

I also impressed upon the landlord's agents the importance to be available to receive payments from a tenant, especially when a 10 Day Notice to End Tenancy for Unpaid Rent has been served and to exercise due diligence in being prepared to accept cash payments by having a receipt book or other method of issuing a receipt available to the landlord's agent. The landlord's agents indicated they understood.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I set aside the 10 Day Notice dated December 3, 2019; however, the landlord remains at liberty to issue a new 10 Day Notice to the tenants, as joint tenants, in accordance with term 5 of the mutual agreement, and any date thereafter where the tenants fail to pay rent that is due.

Conclusion

The parties reached a mutual agreement during the hearing that I have recorded in this decision. The 10 Day Notice dated December 3, 2019 is set aside and the tenancy continues at this time.

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: January 28, 2020

Residential Tenancy Branch