



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a Notice to End Tenancy for Unpaid Rent and more time to make the application. The landlord had applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared at the hearing and 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.

Preliminary and Procedural Matters

The landlords had named three tenants in filing the landlords' application (referred to by initials JA, JL and JG); however, only one tenant (JA) appeared at the hearing. The tenant stated that the two other named tenants ceased residing in the rental unit at the end of March 2012 and in April 2012 respectively and that he is the only tenant currently occupying the rental unit. The landlord acknowledged he was aware that JG had vacated at the end of March 2012 but was uncertain as to the residency of JL. As the landlord had sent the hearing packages to the rental unit May 7, 2012 and applicant bears the burden to show that the address used for service is the tenant's address of residence at the time of mailing, I found I was not satisfied that JL and JG were sufficiently served with the landlord's application. Therefore, I amended the landlord's application to exclude those two other tenants.

The tenant acknowledged that he did not submit a copy of the Notice he was disputing to the Residential Tenancy Branch or the landlord. I noted that the tenant did not indicate any details of dispute on his application.

Section 59 of the Act provides that an Application for Dispute Resolution include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Rule 3.4 of the Rules of Procedure provides that the applicant must file copies of all available documents at the time of filing an Application for Dispute Resolution. The tenant filed an Application for Dispute Resolution to dispute a Notice to End Tenancy he

received but did not provide a copy of the Notice at the time of filing the application or any other time prior to the hearing. I can think of no other document more critical or pertinent to the tenant's application than the Notice under dispute. Therefore, I dismissed the tenant's application to cancel the Notice to End Tenancy due to insufficient particulars and evidence.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent, and if so, what is the amount recoverable from the tenant?

Background and Evidence

The parties provided the following consistent testimony: The rental unit is a 2 bedroom apartment. In February 2012 the landlord spoke to the tenant and JG over the telephone about renting the apartment. It was agreed during those phone conversations that the tenants were required to pay \$450.00 each in monthly rent and \$225.00 each for the security deposit. A tenancy agreement was not signed by the tenants before the tenants took possession of the unit or anytime thereafter. The landlord received a security deposit of \$225.00 from the tenant and \$450.00 for the month of March 2012; however, JG did not pay rent for March 2012. On March 22, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to both JA and JG indicating \$450.00 in rent was outstanding. JG moved out of the apartment at the end of March 2012 and the tenant remained.

I also heard that the tenant paid \$450.00 for April 2012 rent and another person, JL, moved in during April 2012. The landlord faxed a tenancy agreement identifying JA and JL as tenants to the income assistance office but it was never returned to the landlord signed by the tenants. On April 12, 2012 the landlord issued a 10 Day Notice to JA and JL for \$450.00 in rent not paid.

The tenant submitted that he found the 10 Day Notice dated April 12, 2012 slid under his door on April 25, 2012. The landlord submitted a sworn affidavit from his Realtor that she posted the respective 10 Day Notices on the door of the rental unit on March 22, 2012 and April 12, 2012.

During the hearing the landlord submitted that the monthly rent was \$900.00 under a co-tenancy agreement. The landlord pointed to the tenancy agreement he faxed to the income assistance office as evidence of a co-tenancy agreement.

The tenant submitted that there was a separate tenancy agreement with each tenant residing in the unit, or a tenancy in common, and he was not responsible for paying the entire security deposit or monthly rent of \$900.00 to the landlord. The tenant testified that he never received copies of a tenancy agreement to sign.

During the tenant acknowledged he has not paid rent for May 2012.

Documentary evidence provided by the landlord for this proceeding included copies of: the 10 Day Notices issued in March and April 2012; the sworn affidavit for service of the 10 Day Notices; the tenancy agreement faxed to the income assistance office with the landlords' signatures only; and, copies of the cheque stubs for the security deposit of \$225.00 and \$300.00 in rent for the tenant for the month of March 2012.

Analysis

Where a tenant receives a 10 Day Notice, the tenant has five days to pay the outstanding rent or dispute the Notice. The tenant received a Notice and disputed it; however, the tenant's application to cancel the Notice has been dismissed. Pursuant to section 55 of the Act, I grant the landlord's request for an Order of Possession as the tenant's application to cancel a Notice to End Tenancy has been dismissed. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

A tenant is required to pay rent in accordance with the terms of their tenancy agreement. In the absence of a fully executed written tenancy agreement I find the terms of tenancy were verbal. Therefore, I have relied upon the verbal testimony of the parties in making this decision.

Given the landlord testified that he verbally told the tenants that their monthly rent was "\$450.00 each" and that the security deposit was "\$225.00 each" I find these are the terms agreed to by the tenant. Having heard the tenant paid \$450.00 for March 2012 and April 2012 but did not pay rent for May 2012 I award the landlord \$450.00 in loss of rent for May 2012. The landlord's request to retain the security deposit in partial satisfaction of the unpaid rent is granted. Accordingly, the landlord is provided a Monetary Order in the net amount of \$225.00.

The landlord remains at liberty to pursue the other tenants for unpaid rent for the months of March and April 2012 if he wishes to pursue that remedy.

I order each party to bear the cost of their respective applications.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$225.00 to serve upon the tenant.

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: May 17, 2012.

Residential Tenancy Branch