

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent, a monetary order for damage to the unit and for unpaid rent, and an order permitting the landlord to retain the security deposit in partial satisfaction of the claim.

All parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(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?

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on May 31, 2009. The landlord's agents testified that rent in the amount of \$550.00 is payable on the 1st day of each month. At the outset of the tenancy, the tenants paid a security deposit in the amount of \$275.00.

The rental unit is an apartment in a 34 suite building. The landlord's agents also reside in the building, and the tenants attend at the agents' suite monthly to pay the rent.

The landlord's agents testified that the tenants failed to pay rent in the month of February, 2010. Then, on February 4, 2010, one of the agents heard a rumour that the tenants had planned to move out, so the agent ran home and asked one of the tenants, who confirmed that it was the case and that he would pay the outstanding rent by noon

the next day. The male tenant was in the process of moving at the time. No payment was received on the following day as promised and the landlord's agent attempted to contact the female tenant, who still resided in the unit, but received no answer at the door. Early the following morning, the landlord's agents called the police due to loud music coming from the tenants' apartment.

On February 7, 2010, the landlord's agent served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the tenants by sliding it under the door of the residence. The landlord's agents, however, provided written evidence in advance of the hearing indicating that the notice was posted to the tenants' door.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was also provided in advance of the hearing by the landlord's agents. It shows that it was issued on February 7, 2010, and it states that the expected date of vacancy is the same day, being February 7, 2010. The female tenant vacated the unit on that date.

The landlord is claiming 15 hours of cleaning after the tenants vacated the unit at \$15.00 per hour, totalling \$225.00, as well as \$150.00 for hiring a cleaning company to clean the carpet, and rent in the amount of \$550.00 for the month of February. The landlord's agents did not see the bill from carpet cleaners and testified that the cleaners sent the invoice directly to the landlord company, but assume it is \$150.00 because that's how much they paid the same company to clean their apartment on an earlier date.

Testimony was provided that a move-in inspection report was completed on May 31, 2009, however, when questioned about providing opportunities to the tenants for a move-out inspection, the landlord's agents testified that they did not provide any such opportunity. The tenant also testified that the landlord's agents have her cell number and that they never tried to contact her.

The Tenancy Agreement that was provided by the landlord's agents as evidence prior to the hearing clearly shows that the rent amount is \$275.00, payable in advance on the 1st day of each month, however, all parties agree that the tenants have been paying

\$550.00 since the tenancy began. The landlord's agents testified that the rental amount on the Tenancy Agreement is an error, and that the correct amount is \$550.00. The tenants did not dispute that they had been paying \$550.00 but questioned why they were paying that much when the agreement is clearly a lower amount.

The tenants testified that they received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was accompanied by a note from the landlord's agents stating that they must move out immediately, on February 7, 2010 or the locks would be changed and they would not be able to move out their belongings. One of the tenants also testified that the landlord's agent attended at her mother's house looking for the female tenant in an attempt to serve her with the Application for Dispute Resolution, and was met by the tenant's 10 year old brother. The landlord's agent was told that the tenant was not there, and the agent then called him a liar and told him the police would be called if the tenant did not come to the door.

Analysis

Firstly, with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the *Residential Tenancy Act* states as follows:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

And further,

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The landlord is required, pursuant to this legislation, to allow time for service, and give an effective vacancy date on the notice that is 10 days from the date of such service, and then wait for 5 days to allow the tenants an opportunity to pay the outstanding rent. The landlords gave an immediate date of vacancy and are therefore in breach of the *Act*. The landlord's agents served the tenants with a 10 Day Notice to End Tenancy on the 7th of the month and are claiming rent for that month. I find that the landlord is not entitled to any rent for that month due to the timing and the manner in which the tenants were evicted. Further, the *Act* sets out the method in which documents can be served. The landlord's agents provided written evidence of service that is contrary to the testimony that they gave, and I find that the landlord did not serve the Notice to End Tenancy in any of the methods provided for in that section.

I cannot entirely accept the hearsay evidence of the tenants that the landlord's agent called the tenant's young brother a liar or threatened to call the police, but I do find that the landlord's were also in breach of the *Act* by not providing any opportunity to complete a move-out inspection. The *Residential Tenancy Act* states that:

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

The landlords clearly did not give the tenants any opportunity to complete the inspection or sign any report, and are therefore in breach of this section of the *Act*. The tenants were served with documentation, including a note that gave them no time at all to clean the unit. Further, the landlord's agents have not provided any evidence to substantiate the amount claimed for carpet cleaning, and are asking for an order for \$150.00 based on what they think it should have cost. The burden of proving such claims and amounts lies on the landlord, and I find that the agents have not sufficiently proved their claim. As such, the landlord is not entitled to any monetary order for time and money spent cleaning the unit.

I make no finding with respect to the tenants paying a greater amount in rent than provided in the written Tenancy Agreement, as I have no application before me by the tenants. However, I find that the landlord's agents have breached the *Act* and the Tenancy Agreement, and cannot expect the dispute resolution process to enforce either and support such breaches. It is the responsibility of the landlord's agents to read the applicable legislation and become familiar with their obligations and responsibilities as landlords.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The tenants have provided a forwarding address to the landlord's agents at the hearing, and

I direct that the landlord comply with Section 38 of the *Residential Tenancy Act* with respect to the security deposit. Because the landlord has not been successful with its application, the landlord is not entitled to recovery of the filing fee from the tenants for the cost of this application.

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: March 31, 2010.

Dispute Resolution Officer