



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord – File No. A: OPR, FF
Landlord – File No. B: OPR, OPC, OPB, MND, MNR,
MNDC, FF
Tenant – File No. C: MT, CNC, CNR

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of this application on one application, and has filed a further application for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; an Order of Possession for breach of an agreement with the landlord; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order allowing the tenant more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; and for an order cancelling a notice to end tenancy for unpaid rent or utilities. The files have been joined to be heard together.

The landlord attended the conference call hearing and gave affirmed testimony however the tenants did not attend.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to an Order of Possession for cause?
Is the landlord entitled to an Order of Possession for breach of an agreement?
Is the landlord entitled to a monetary order for damage to the unit, site or property?
Is the landlord entitled to a monetary order for unpaid rent or utilities?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
Are the tenants entitled to an order allowing the tenants more time to make an application to cancel a notice to end tenancy?

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?
Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2011 with the female tenant. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month. On February 21, 2011 the landlord collected a security deposit from the tenant in the amount of \$400.00.

On April 1, 2011 the landlord verbally agreed that if the tenant lives in the rental unit alone, rent would be reduced to \$750.00 per month, but the tenant did not reside there alone.

On April 19, 2011 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice was provided in advance of the hearing, and it states that the tenant has failed to pay rent in the amount of \$750.00 and remaining outstanding is \$350.00 that was due on April 1, 2011. The notice is dated April 19, 2011 and contains an expected date of vacancy of April 30, 2011, and both pages of the 2-page form have been provided. She further testified that the tenant had already paid \$400.00 of the rent that was due April 1 on April 14, 2011.

The tenant and landlord met at the Residential Tenancy Branch on April 27, 2011 where the tenant served the landlord with the Tenant's Application for Dispute Resolution, and the tenant also gave the landlord another \$400.00. The landlord stated that she gave the tenant a receipt that had "For Use and Occupancy Only" written on it, but did not provide a copy of that receipt for this hearing.

The landlord also testified that she personally served the tenant with a 1 Month Notice to End Tenancy for Cause, but did not provide a copy of that notice as evidence for this hearing. She stated that the tenants in the rental unit are loud and smoke in the rental unit which is contrary to the tenancy agreement.

The tenant further failed to pay rent when it was due on May 1, 2011. Today, the landlord received \$400.00 from the tenant's roommate, for which she did not issue a receipt. The roommate advised the landlord that the tenant is presently in jail, and the testified that the tenant is currently \$400.00 in arrears for rent for the month of May, 2011.

The landlord further testified that damage to the rental unit has been caused by the tenant and her roommate. She stated that the door frame is broken, and is not sure of the extent of damages.

Analysis

The *Residential Tenancy Act* states that a landlord may issue a notice to end a tenancy for unpaid rent or utilities on date after the date rent is payable under the tenancy agreement. The tenant then has 5 days to pay the rent in full or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, although the landlord testified that a receipt for use and occupancy only was issued, the landlord failed to establish that the intent was not to reinstate the tenancy. Further, in the absence of a copy of the receipt, I have no conclusive evidence before me that the tenant knew that the intent was to not reinstate the tenancy. The landlord then collected more rent from the tenant's roommate without issuing a receipt, and therefore, I find that the tenancy has been reinstated.

The landlord also testified that she served the tenant with a 1 Month Notice to End Tenancy for Cause, however has not provided a copy in advance of this hearing. It is very difficult to rule on the validity of a notice if a copy is not provided. Further, the landlord collected rent after issuing the notice without issuing a receipt, and again, I find that the tenancy has been reinstated.

The landlord is currently at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the tenant owes rent in the amount of \$400.00 for the month of May, 2011. The tenant will then have 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the landlord may re-apply for dispute resolution to obtain an Order of Possession.

The landlord is also at liberty to re-serve the tenant with a new 1 Month Notice to End Tenancy for Cause.

I also find that the landlord's application for a monetary order for damages has been filed prematurely. The *Act* requires the tenant to repair any damage to the rental unit before moving out. If the tenant fails to do so, the landlord will be at liberty to re-apply for damages.

Since the tenants have failed to attend the hearing, the tenant's application must be dismissed.

Since neither party has been successful in obtaining an order, I decline to order that either party recover the filing fee for the cost of these applications.

Conclusion

For the reasons set out above, the applications filed by the landlord and by the tenants are hereby dismissed.

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 20, 2011.

Residential Tenancy Branch