

DECISION

Dispute Codes MT, CNL, MNSD, FF, OPL, MNR, O

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for landlord use of the property pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord agreed that the male tenant (the tenant) handed her a copy of his dispute resolution hearing package on June 7, 2011. The tenant agreed that the landlord handed him a copy of her dispute resolution hearing package on June 10, 2011. I am satisfied that the parties served one another with their dispute resolution hearing packages in accordance with the *Act*.

The parties also agreed that they exchanged their evidence packages with one another. Although the landlord's evidence package was served after the time frame for doing so had expired, the tenant said that he did receive it in sufficient time to prepare for this hearing. I considered all written evidence submitted by the parties in coming to my decision.

The parties disagreed on the timing of the landlord's provision of the 2 Month Notice to the tenants. The landlord testified that she gave this notice to the male tenant on May 15, 2011. The tenant testified that the landlord did not hand this to him until May 31,

2011. For the reasons outlined below, I do not need to make a decision regarding the date of the landlord's service of this document to the tenants or whether the tenants should be granted an extension of time to apply to cancel the landlord's 2 Month Notice.

Issues(s) to be Decided

Are the tenants entitled to cancellation of the landlord's 2 Month Notice? If not, are the landlords entitled to an Order of Possession? Are either of the parties entitled to a monetary award? Are either of the parties entitled to recover their filing fees for their applications?

Background and Evidence

This month-to-month tenancy commenced on December 1, 2010. Monthly rent is set at \$750.00, payable on the first of each month. The landlords continue to hold the tenants' \$375.00 security deposit paid on November 26, 2010.

The tenant provided written and oral evidence questioning the sufficiency of the landlord's 2 Month Notice. He entered the original 2 Month Notice into written evidence. The landlord said that she did not enter a copy of the 2 Month Notice into written evidence because she agreed that the 2 Month Notice submitted by the tenant was accurate. He noted that the landlord failed to identify any reasons on the reverse side of the 2 Month Notice. The landlord testified that she did not know that she had to complete the second side of the 2 Month Notice.

The tenant said that if the landlord's 2 Month Notice were cancelled, the tenants would no longer be seeking a monetary award, other than for recovery of their filing fee for this application.

Analysis

Section 49(7) of the *Act* requires a landlord who is seeking an end to a tenancy for landlord's use of property to issue the notice in compliance with section 52 of the *Act*. Subsections 52(d) and (e) of the *Act* read in part as follows:

52 *In order to be effective, a notice to end a tenancy must be in writing and must...*

(d) ...state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

I find that there is undisputed evidence that the landlord did not properly complete the form required to issue a 2 Month Notice to End Tenancy. The landlord provided no written reason in the approved form for why she was issuing the 2 Month Notice. Under these circumstances, I find that the landlord has not issued a valid 2 Month Notice to

end this tenancy and, as such, I set aside the landlord's 2 Month Notice. The effect of this decision is that the tenancy continues.

Since the tenancy is continuing, there is no need to consider the tenants' applications for a monetary award and for permission to obtain their security deposit. As the tenants were successful in their application, I allow them to reduce their next monthly rent payment by \$50.00, the amount of the filing fee.

At the hearing, the parties agreed that the tenants have not paid any portion of their June 2011 rent. The landlord has not issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant said that he would pay the outstanding June 2011 rent within 24 hours of the hearing if the parties are not able to reach some other compromise regarding their dispute. As this was acceptable to the landlord and the parties agreed to attempt to resolve their outstanding dispute, there is no need to consider the landlord's application for a monetary award. I find that the landlord is not entitled to recover her filing fee for this application.

Conclusion

I cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property with the effect that this tenancy continues. I dismiss both applications for monetary awards. I dismiss the tenants' application to obtain all or a part of their security deposit. I allow the tenants' application to recover their \$50.00 filing fee and order the tenants to recover this amount by reducing their next monthly rent payment by \$50.00. I dismiss the landlord's request to recover her filing fee for her 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*.