



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, FF

Introduction

This hearing was convened by way of conference call on November 29, 2011 in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; 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 tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application. The hearing did not conclude on November 29, 2011 and was adjourned for a continuation of the testimony and submissions of the parties to December 5, 2011.

The landlord and the tenant attended both days of the hearing, provided evidence in advance of the hearing as well as affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All evidence has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that the landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is withdrawn.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- 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?
- Is the tenant 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 June 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlord, and the parties did not sign a written tenancy agreement.

The landlord further testified that the building was owned by the landlord's uncle, but sold the entire building on June 1, 2011 to a single purchaser with the exception of this rental unit which was purchased by the landlord in May, 2011. The tenant, who had been the caretaker for the building was told in May, 2011 that the unit that the tenant resides in had been purchased by the landlord. The tenant chose to rent the unit for \$1,000.00 per month.

The landlord further testified that the tenant claimed that the tenant was only required to pay \$300.00 per month as a result of a previous contract with a property management company which looked after the apartment complex, but that contract ended in 2009. The contract was to cover wages; the property management company paid \$700.00 toward the tenant's rent. Then in 2010, the tenant was paying \$1,000.00 per month. The parties had met in May, 2011 with the previous owner and the landlord told the tenant that the landlord had bought the unit.

The tenant has not paid any rent from June, 2011 to November, 2011, but the tenant caused repairs to be completed to the unit for a total of \$901.63 and the landlord requests a monetary order for the difference in the amount of \$5,098.37.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 4, 2011 by courier which contained an expected date of vacancy of November 19, 2011. The notice was received by the tenant on November 7, 2011, however a copy was not provided by either party for this hearing.

The tenant testified that the tenant has been the caretaker of the apartment complex since March, 2009. The owner at that time had been through 4 property managers, and each time the contract remained in existence without changing the names. The contract provided for payment in the amount of \$700.00 per month toward the tenant's \$1,000.00 per month rent, and the tenant was to pay the balance of \$300.00 per month or pay for repairs. The tenant provided a copy of the contract for this hearing, and it states that during the tenant's employment, the rent for the rental unit was \$300.00 per month, and that upon termination of employment by either party the rent would automatically be

increased to the current market rent. The tenant paid \$259.87 in June, 2011; \$341.76 in July, 2011; \$300.00 in August, 2011; and \$228.81 in September, 2011 to a plumber.

The tenant further testified that new owners in June, 2011 fired the property manager. The tenant needs a new tenancy agreement and a new employment agreement, but the tenant did not follow through by insisting that new agreements were drawn up. The tenant is still employed, however is presently on stress leave.

In mid-May, 2011 the tenant received a letter from the property management company stating that the tenant was still the caretaker until the end of June, 2011. The tenant provided a copy of that letter prior to this hearing. The letter states that the building had been sold and the property management company's services were no longer required. No contact information for the new building owner was known at that time, but that information would be posted in the building once it became available, and the caretaker would remain in that position until the end of June, 2011 and the new building owner would determine the employment situation of the tenant after that. The tenant was awaiting the rent allowance from the new owners of the rest of the building in order to pay June's rent. The tenant also testified that the tenant has never been told who the new owner is of the rental unit occupied by the tenant. The tenant received a notice with instructions to post it in the building, which states who the new owner of the building is and the name and phone number for a contact person of the numbered company. The numbered company bought the entire building with the exception of the tenant's unit.

On June 19, 2011 the tenant received a text message from the previous owner of the building authorizing the tenant to pay for bathroom repair bills and deducting the cost from the rent. A copy of the message was provided for this hearing.

The tenant also provided a copy of a paystub for a pay day dated May 13, 2011, and another from the numbered company for the same building for a payday on September 30, 2011.

The landlord's uncle (and previous owner) was not called to testify.

Analysis

Under the *Residential Tenancy Act*, if a landlord sells a rental unit, the purchaser has three options: to request in writing that the vendor end the tenancy, in which case the vendor is required to give the tenant 2 months' notice and the equivalent of one month's rent as compensation; or negotiate a new tenancy agreement with the tenant; or carry on with the tenancy agreement that was in place with the vendor and the tenant. In this

case, the purchaser did not request in writing that the vendor cancel the tenancy, nor did the purchaser negotiate a new tenancy agreement in writing with the tenant. The landlord testified that the parties verbally agreed to a tenancy with rent payable on the 1st day of each month in the amount of \$1,000.00 per month, however that testimony is disputed by the tenant who testified that the tenant did not know who to pay rent to. The onus is on the landlord to prove the terms of the tenancy agreement, and I find that the landlord has failed to establish that. Therefore, I find that the tenancy continues on the same terms as with the previous landlord. Neither party has provided me with the previous tenancy agreement. The tenant has provided me with one page of an addendum to an employment agreement that states that rent is \$300.00 per month until termination of employment, however I do not accept that document to be an addendum to a tenancy agreement. The landlord has not provided me with any evidence with the exception of proof of service of the landlord's application and copies of 2 emails that do not establish the claims made by the landlord. I cannot be satisfied that the amount of rent was established with the new owner, or the amount of arrears of rent that may have accumulated since the landlord bought the rental unit. Therefore, I cannot grant a monetary order requested by the landlord.

With respect to the landlord's application for an Order of Possession, I have not been provided with a copy of a notice to end the tenancy, and therefore cannot determine whether or not it ought to be upheld. The *Residential Tenancy Act* requires that the notice be in a prescribed form, contain 2 pages, be signed and dated by the landlord, give the address of the rental unit, and state the effective date of the notice. The only evidence before me is the testimony of the landlord that the notice is dated November 4, 2011 and contains an effective date of vacancy of November 19, 2011. Therefore, I cannot uphold the notice, and the notice must be cancelled.

With respect to a continuing tenancy, the tenant is required to pay rent. The landlord is at liberty to issue a new notice to end the tenancy but must be prepared to prove the terms of the previous tenancy agreement.

Conclusion

For the reasons set out above, the landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement are also both dismissed.

The notice to end tenancy for unpaid rent or utilities is hereby cancelled.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee 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: December 15, 2011.

Residential Tenancy Branch