



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, OPC, OPB, ET, MND, MNR, MNSD, MNDC, FF

For the tenant – MT, CNR

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent and utilities; an Order of Possession for cause; an Order of Possession because the tenant has breached an agreement with the landlord and an Order of Possession based on an Early End to Tenancy. The landlord has also applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for more time to file an application to cancel the 10 Day Notice to End Tenancy and to cancel the 10 Day Notice to End Tenancy for unpaid rent. The hearing went ahead as scheduled and the landlord dialed into the conference call. The phone line remained open for 10 minutes however the tenant did not dial into the call during this time. Based on this I find that the tenant has failed to present the merits of her application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and were handed to the tenant in person on

December 23, 2011. The landlord has provided a proof of serve document signed by the landlord and a witness that confirms service took place as declared by the landlord.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?
- Has the tenant breached an agreement with the landlord that would warrant an Order of Possession
- Is the landlord entitled to an Order of Possession on the basis of an Early End to Tenancy?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the tenants security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on May 01, 2011. The tenant pays a monthly rent of \$575.00 which is due on the first day of each month in advance. The tenant paid a security deposit of \$287.50 on May 01, 2011. This tenancy was originally for two tenants one of which was the landlord's son. The landlord testifies

that her son moved out in August 2011 and the tenancy continued with the female tenant only.

The landlord testifies that while her son was still a tenant the tenants were served a One Month Notice to End Tenancy on June 27, 2011. This Notice had an effective date of July 31, 2011 and gave the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to
 - (i) Damage the landlords' property
 - (ii) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or
- 3) Security or pet damage deposit was not paid within 30 days as as required by the tenancy agreement

The landlord testifies that a window in the unit was broken by someone connected to the tenant but who was not an invited guest of the tenant. A fridge has gone missing from the unit which has been replaced by a smaller older model and the landlord has reason to believe that illegal drug activity is taking place in the unit.

The landlord testifies she did not file an application to uphold the One Month Notice after the effective date of the Notice as she was trying to work things out with the tenants.

The landlord testifies that the tenant failed to pay rent for December, 2011 and a 10 Day Notice to End Tenancy was served upon the tenant in person on December 02, 2011. The tenant did not pay Decembers rent but on December 21, 2011 the landlord did receive a cheque from the Ministry for January, 2012 rent of \$575.00. The landlord states she accepted this rent.

The landlord seeks an early end to tenancy but has not provided any evidence to support this.

The landlord seeks an Order of Possession for breach of an agreement with the landlord. The landlord has provided no evidence to show which agreement has been breached.

The landlord seeks a Monetary Order to recover unpaid rent of \$575.00. The landlord also seeks a Monetary Order because the tenant did not pay her gas bill and the gas had been disconnected. The landlord states the gas company have told the landlord that she will be responsbaile to pay a \$60.00 reconnection fee. The landlord seeks to recover this fee from the tenant.

The landlord seeks a Monetary Order for \$287.00 for a pet damage deposit as the tenant has brought four cats into the unit without the landlord's permission.

The landlord seeks a Monetary Order for \$950.00 to replace the large picture window the landlord states the tenant is responsible to replace.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently the landlord has established that the tenant failed to pay rent for December, 2011 and the landlord is entitled to a Monetary Order to recover this rent of **\$575.00** pursuant to s. 67 of the *Act*.

With regards to the landlords claim for an Order of Possession for unpaid rent and for cause; when a landlord accepts all or part of the rent arrears or any other rent after a 10 Day Notice to End Tenancy or after a One Month Notice to End Tenancy are issued the landlord should advise the tenant in writing that the payment(s) are being accepted for use and occupancy only and do not reinstate the tenancy./ The landlord must tell the tenant of one of the options: that the tenant must vacate in accordance with the Notice to End Tenancy, or the tenant must vacate at the end of the month. As the landlord did not advise the tenant of these things the landlord has in effect reinstated the tenancy. Consequently, the landlord's application for an Order of Possession based on the 10 Day Notice and the One Month Notice is dismissed.

With regards to the landlords applications for an Early End to Tenancy and for an Order of Possession on the grounds that the tenant has breached an agreement with the landlord; the burden of proof falls to the landlord in both of these matters to provide evidence to support a request for an Order of Possession because the tenant has breached an agreement or under the criteria for an Early End to Tenancy. The landlord has failed to provide any evidence to support either of these reasons and her applications on both counts are dismissed.

As the tenancy will continue at this time I am unable to deal with the landlord's application to keep the security deposit. A security deposit is held in trust by the landlord

until the tenancy ends and must then be dealt with in accordance to s. 38 of the *Act*. The landlord is at liberty to file a new application to keep the security deposit at the end of the tenancy or if the landlord files a new application to recover unpaid rent for January, 2012.

With regards to the landlords claim for a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss; The landlord seeks to recover the sums of \$60.00 to have the gas reconnected; the sum of \$287.50 for an unpaid pat damage deposit; and \$950.00 to replace a broken window. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damage and loss does not meet all of the components of the above test. The landlord has not submitted any evidence to support their claim

that the gas has been disconnected due to the tenants failure to pay her gas bill or the actual amount to reconnect the gas; the landlord has provided no evidence to support her claim that the tenant is responsible for the broken window or the actual amount required to replace the window. The landlord is not entitle to file an application to recover an unpaid pet damage deposit six month after the landlord first requested the tenant to pay the deposit as the landlord has an obligation to mitigate her loss and should have enforced the One Month Notice to End Tenancy on that ground in August 2011.

Consequently the landlords claim for a Monetary Order for damages and for money owed or compensation for damage or loss is dismissed without leave to reapply.

As the landlord is partially successfully with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$625.00** comprised of unpaid rent for December and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

The landlord is at liberty to serve the tenant with another Notice to End Tenancy in the event rent is unpaid or for cause.

The tenants application is dismissed without leave to reapply.

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: January 11, 2012.

Residential Tenancy Branch