



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNR, FF

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenants have applied to cancel a 10 Day Notice to End Tenancy and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; 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 tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenants and landlord provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The landlord provided evidence to the other party in advance of this hearing and the first hearing was adjourned to allow the tenants opportunity to provide their evidence to the landlord. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord has used a different last name for the female tenant on his application. The parties did not raise any objection to this tenant's name being amended.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on July 25, 2010. Rent for this unit is \$800.00 per month and is due on the first day of each month in advance. The tenants paid a security deposit of \$400.00 within the first month of the tenancy commencing.

The landlord testifies that the tenants have failed to pay rent owed to a sum of \$3,450.81. After the hearing was adjourned to give the landlord opportunity to review the tenants' evidence of rent receipts, the landlord revises his position on the amount of rent owed to the end of January, 2012 to \$2,925.81. The landlord testifies that he served the tenants with a 10 day Notice to End tenancy in person on January 02, 2012. This Notice has an effective date of January 12, 2012 and states the tenants owe \$3,450.00 in unpaid rent.

The landlord also seeks to recover unpaid rent or a loss of rental income of \$800.00 for February, 2012 as the landlord states he will not be able to re-rent the unit for February at such short notice.

The landlord also seeks to recover \$25.00 in late fees for each month that rent was late to the total sum of \$225.00.

The landlord seeks to apply the tenants' security deposit of \$400.00 towards the unpaid rent. The landlord also seeks an Order of Possession to be effective as soon as possible.

The tenants agree that they do owe rent of \$2,925.81. However the tenants state some of their rent payments were used to pay the outstanding utilities. The tenants' testify that they had an agreement with the landlord to pay \$300.00 each week to make up the rent and the rent arrears. The tenant testifies that when he realized he would not be able to stick to this agreement he spoke to the landlord who said they could miss a week and catch up after.

The landlord disputes the tenants' testimony and testifies that he did allow the tenants to pay \$300.00 a week but the tenants defaulted on this agreement and the last payment they made was on December 13, 2011 when the tenants paid \$400.00. The landlord testifies as the tenant has done this in the past the landlord was not willing to allow the tenant to miss any more payments because this resulted in the tenants falling further behind with their rent.

The landlord testifies that the utilities were in the landlords name and the tenants had to pay 50 percent share of each utility bill. When the tenants fell behind with these payments the utilities were in danger of being cut off so the landlord deducted the tenants share from some of the rent payments made and marked the receipts as such to show the tenants which payments had been used towards utilities and rent.

The tenants have provided a copy of the receipts showing the amounts paid. The landlord has provided a copy of the tenancy agreement and addendum, a copy of rent ledgers and the 10 Day Notice to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the unpaid rent; 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.

The tenants do not dispute that they owe rent of **\$2,925.81** in unpaid rent; consequently the landlord is entitled to recover this sum from the tenants and will receive a monetary award pursuant to s. 67 of the Act.

With regard to the landlords claim for unpaid rent for February, 2012; The Residential Tenancy Policy Guidelines #3 deals with a landlord's right to recover a loss of rental income after a 10 Day Notice to End Tenancy has been served upon a tenant. This guideline states, in part, in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. However, a landlord must also show how he has mitigated his loss in this matter by attempting to re-rent the unit as quickly as possible. As the date of this hearing falls so closely to the end of January, 2012 I find the landlord would find it more difficult to re-rent the unit for February 01, 2012 however the landlord may still have the opportunity to re-rent the unit for part of February, 2012. Consequently, it is my decision that the landlords claim for a loss of rental income is limited to half a month's rent of **\$400.00**. The landlord is therefore entitled to a monetary

award for this sum pursuant to s. 67 of the *Act*. The landlord is at liberty to reapply for the remainder of rent for February, 2012 in the event the unit cannot be re-rented for the remainder of February, 2012.

With regards to the landlords claim for late fees of \$225.00; I have reviewed the addendum to the tenancy agreement and find the landlord as entered a clause in this addendum to notify the tenants that a fee of \$25.00 will be charged for late rent payments. Consequently, the landlord has established his claim, to recover these late fees of **\$225.00** pursuant to s. 67 of the *Act*.

I find the landlord is entitled to keep the tenants security deposit of \$400.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,925.81
Loss of rental income for February, 2012	\$400.00
Late fees	\$225.00
Subtotal	\$3,550.81
Less security deposit	(-\$400.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$3,200.81

There is no dispute that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days but did apply to cancel the Notice two days after it was received. However, the tenants agree that they do owe rent to the landlord and it has been determined at the hearing that the amount of outstanding rent is \$2,925.81 not the amount of \$3,450.00 as shown on the

Notice. Consequently the Notice will be upheld due to the revised amount of unpaid rent and I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety. The 10 Day Notice to End Tenancy for unpaid rent dated January 02, 2012 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in partial favor of the landlord's revised monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,200.81**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 30, 2012.

Residential Tenancy Branch