



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security; and to recover the filing fee from the tenants for the cost of this application.

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

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental; unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord is entitled to keep all or part of the security deposit towards any rent arrears?

Background and Evidence

This month to month tenancy started on September 01, 2011. Rent for this unit was \$1,500.00 per month due on the 1st of each month. The tenants paid a security deposit on September 01, 2011 of \$750.00.

The landlord testifies that complaints were received from neighbours and the tenant living downstairs that the smell of marijuana was coming from these tenants unit. This complaint was received on September 15, 2011. The downstairs tenant also complained of loud noise and parties from these tenants unit. The landlord testifies that in the addendum in place between the landlord and tenants it states no drug use and no loud parties. The landlord testifies that he served the tenants with a One Month Notice to End Tenancy due to these complaints on September 17, 2011. This Notice had an effective date of October 17, 2011.

The landlord testifies that the tenants failed to pay rent on October 01, 2011 and they were served with a 10 Day Notice to End Tenancy on October 02, 2011. This Notice had an effective date of October 12, 2011 and states the tenants owe rent of \$750.00. The Notice was posted to the door of the tenants unit and was witnessed by three people who have signed a proof of service letter. The landlord states he did not put down the whole months' rent on this Notice as the tenants were to move out by October 12, 2011 and he did not know he could claim for the whole month. The landlord states the tenants did not dispute either of the Notices and moved from the rental unit on October 17, 2011.

The landlord seeks a Monetary Order for \$1,500.00 for the October, 2011 rent arrears and seeks an Order to keep the security deposit in partial satisfaction of this claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The landlord has verbally requested to amend the application to include a loss of rental income for November, 2011 as he has been unable to re-rent the unit since the tenants moved out.

The tenant disputes the landlord's claims. The tenant states they did not smoke marijuana and did not have loud parties. The tenant states after receiving the One Month Notice to End Tenancy they decided to move out on the date given on this Notice. The tenant testifies he agreed the landlord could keep their security deposit to cover rent up to the effective date of the One Month Notice and therefore should not have to pay any more rent for October, 2011.

The tenant testifies he did not get the 10 Day Notice to End Tenancy until they received the landlords hearing documents.

Analysis

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 argue they moved out as per the date given on the One Month Notice therefore they should not be reasonable for rent after this date. Having reviewed the evidence and testimony of the parties I find the landlord did but an incorrect date on the Notices, however, s. 53 of the Act states:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day

in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently, it is my decision that the effective dates of the One Month Notice would be deemed to be October 31, 2011 which is one clear months notice pursuant to s.47(2)(b) and the effective date of the 10 Day Notice would be deemed to be October 15, 2011 as it was deemed served upon the tenant three days after it was posted to the tenants door. The tenants are therefore be deemed to be responsible for all the rent in October, 2011 and the landlord is therefore entitled to recover rent arrears for the whole of October, 2011 and will receive a monetary award of **\$1,500.00** pursuant to s. 67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$750.00** in partial payment of the rent arrears.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for October, 2011	\$1,500.00
Less security deposit	(-\$750.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$800.00

The landlord requested that I consider a request for a loss of rental income for November, 2011 against the tenants. In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this matter. As the landlord has not applied for a loss of income in this application he is at liberty to file a new application regarding this.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$800.00**. The order must be served on the tenants 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: November 02, 2011.

Residential Tenancy Branch