



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

Introduction

This hearing was convened by way of conference call in response to applications made 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 and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for more time to make an application to dispute a notice to end tenancy and for an order cancelling a notice to end tenancy.

Both parties attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other. Both parties also provided evidence in advance of the hearing. All evidence and the testimony provided have been reviewed and are considered in this Decision.

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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to more time to make an application to apply for an order cancelling a notice to end tenancy?
- Is the tenant entitled to an order cancelling a notice to end tenancy?

Background and Evidence

This fixed term tenancy began on September 1, 2011 and expires on September 1, 2012. The tenancy agreement, a copy of which was provided by the landlord in advance of this hearing, names 2 tenants, only one of whom has been named by the landlord in the Landlord's Application for Dispute Resolution. Rent in the amount of

\$775.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$387.50.

The landlord testified that the named tenant paid the landlord \$600.00 on August 31, 2011 for the security deposit and a portion of the rent for September, 2011, and then the other tenant paid the landlord \$570.00. There was an overpayment by that tenant in the amount of \$7.50 which was credited to that tenant's portion for a future month.

The landlord further testified that for the month of October, 2011, the unnamed tenant paid the landlord \$380.00 for that tenant's share of the rent and \$260.00 for a portion of November's rent stating that when the named tenant moves out, the tenant will pay the landlord the balance. The named tenant has not paid any rent for October or November, 2011 and owes \$775.00. The unnamed tenant owes \$127.50 for November.

The landlord served the named tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided by the tenant in advance of the hearing. The notice is mostly illegible and contains no address of the rental unit or an effective date of vacancy. The landlord then served the named tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 28, 2011 and provided a copy in advance of the hearing. The notice is issued to a tenant who is not on the tenancy agreement and states that the person failed to pay rent in the amount of \$387.50 that was due on October 1, 2010 and contains an effective date of vacancy of October 26, 2011.

The landlord claims an Order of Possession for the named tenant and a monetary order in the amount of \$1,162.50.

The tenant testified that the two tenants don't get along and avoid each other. As a result, the first notice to end tenancy, which was posted to the door of the rental unit, was not delivered to the named tenant until October 6, 2011. The tenant paid the room-mate \$775.00, and the arrangement with the landlord was to pay the room-mate who would pay the landlord. The room-mate did not pay the rent and went away to Alberta.

Analysis

Firstly, with respect to the notices to end tenancy, I find that the first notice is invalid because it is incomplete. The second notice is also invalid because it names a person who is not a tenant at all. Therefore, the notice cannot be upheld and must be cancelled.

With respect to the unpaid rent, because the tenancy agreement names both tenants, both tenants are jointly and severally liable for the payment of rent, meaning that both tenants are in breach of the tenancy agreement and both are responsible for the payment of \$775.00. The landlord cannot choose to only evict one tenant if both tenants are responsible for the payment of rent. It is up to the tenants to apportion the rents payable.

The landlord is at liberty to issue another notice to end the tenancy if rent remains unpaid. The tenants must pay the rent within 5 days of receiving the notice, or within 5 days of being deemed served with the notice, or must dispute the notice within that 5 day period. If the tenants do neither, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be 10 days after service, and must move out by that date. The landlord may apply for an Order of Possession to obtain vacant possession of the rental unit if the tenants do not pay the rent in full within the 5 day period.

With respect to the tenant's application for an order permitting the tenant more time to make an application to dispute the notice to end tenancy, I find that the tenant's reasons for requesting the extension is justified in the circumstances. The tenant did not receive the notice, and the tenant who did receive the notice was not named in the notice, which is contrary to the legislation. However, the tenant has not made an application to cancel the second notice that was issued by the landlord. Having found that the second notice is invalid, the landlord's application must be dismissed and the tenancy will continue.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety. The tenant's application is hereby allowed, and both notices to end the tenancy are hereby cancelled.

This Decision is final and binding on the parties.

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 10, 2011.

Residential Tenancy Branch