



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords 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.

An agent for the landlord company attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, notice of hearing and evidence by registered mail on January 13, 2012, the tenant did not attend. The landlord's agent testified that the documents were mailed on that date and provided a tracking number assigned by Canada Post for the registered mail. I am satisfied that the tenant has been served with the documents as required under the *Residential Tenancy Act*.

All testimony and the evidence received have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 15, 2011 and expired on January 15, 2012, at which time the tenant was to move out of the rental unit, but did not move. A copy of the tenancy agreement was provided in advance of the hearing and it states that the fixed term begins on January 15, 2011 and ends on January 15, 2011. The landlord's agent stated that the end date contains an error in the year, and the tenant still resides in the rental unit.

Rent in the amount of \$1,175.00 per month was payable in advance on the 1st day of each month, however the tenant received a notice of rental increase which raised the rental amount to \$1,200.00 per month commencing on the 1st day of February, 2012. On February 1, 2011 the landlord collected a security deposit from the tenant in the amount of \$587.50.

The landlord's agent further testified that the tenant paid the landlord rent for the month of December, 2011 but the cheque was returned by the bank for insufficient funds. The tenant gave the landlord \$600.00 towards those arrears during the month of December, 2011 but did not pay all of the rent due, leaving a balance outstanding of \$575.00.

The tenant further failed to pay any rent for the month of January, 2012, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for this hearing. The notice is dated January 3, 2012 and states that the tenant failed to pay rent in the amount of \$1,885.00 that was due on January 1, 2012, and contains an expected date of vacancy of January 14, 2012. The notice was served by posting it to the door of the rental unit on January 4, 2012. The landlord's agent testified that the amount of \$1,885.00 includes the \$575.00 outstanding for December's rent, \$1,175.00 for January's rent, late fees and N.S.F. fees in the amount of \$25.00 each for the returned cheque and late payment of December's rent, \$25.00 for late fees for January's rent, and \$60.00 for parking. The tenancy agreement does not include a clause for late fees or for N.S.F. fees. The tenancy agreement states that parking is free for the first year but does not contain an amount for parking after that first year period. The landlord's agent further testified that the tenant has bounced a lot of rent cheques payable to the landlord, and late fees and N.S.F. fees were charged for the months of April, May, June, July, October and November, 2011 which total \$250.00.

On January 30, 2012 the tenant paid the landlord \$1,400.00 toward arrears by leaving a cheque or money order in the landlord's mail box. The landlord's agent did not see the tenant when the money was placed there, and no receipt was issued. When asked if the tenant received any documentation from the landlord to indicate that the money was being accepted for use and occupancy only, the landlord's agent stated that no receipt or note was issued to the tenant to that effect.

No rent has yet been paid for the month of February, 2012.

The landlord requests an Order of Possession, a monetary order for unpaid rent, late fees, N.S.F. fees, parking and to recover the filing fee from the tenant for the cost of this application.

Analysis

Firstly, dealing with the tenancy agreement, if the landlord wanted the tenancy to end at the end of a one year fixed term, I find that the landlord made a crucial error by writing on the tenancy agreement that the fixed term expires on the day it commenced. I accept the testimony of the landlord's agent that the date contains an error on the year of the end of the tenancy, however the document, if intended to be relied on, cannot contain such an error.

Further, the tenancy agreement does not contain any clause that deals with late payments or cheques returned for insufficient funds. The regulations state that a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent, but only if the tenancy agreement provides for that fee. I also find that the landlord has charged fees totalling \$250.00 that were not provided for nor agreed to in the tenancy agreement. Therefore, the landlord's application for a monetary order to include late fees and an administration fee for cheques returned by the financial institution for insufficient funds cannot succeed.

Also, the tenancy agreement specifies that the tenant will receive the benefit of free parking for the first year of the tenancy. I accept that the first year of the tenancy has expired, however the tenancy agreement does not indicate what the parking fees will be once the year has expired. Therefore, the landlord's application for a monetary order to include \$60.00 for parking cannot succeed.

Finally, dealing with the landlord's application for an Order of Possession, I accept that the landlord accepted rent on January 30, 2012 for rental arrears, and the landlord was entitled to that money, however the landlord did not issue a receipt or any other written notice to the tenant that the money was being accepted for use and occupancy of the rental unit only. Therefore, the landlord has effectively reinstated the tenancy.

The landlord is at liberty to serve the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if rent remains unpaid, however in order to be enforceable, the landlord must make clear the intention of accepting rent after the issuance of such

notice that the landlord is accepting the money for past rent and is not accepting rent to reinstate the tenancy.

Since the landlord has not been successful with the claim before me, I decline to order that the landlord recover the filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: February 03, 2012.

Residential Tenancy Branch