



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes:

MNR, OPR, MNSD, FF, ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated March 9, 2012 and a monetary order for rent owed. The landlord had also applied to end the tenancy immediately without Notice under section 56 of the Act. However, this remedy is reserved for situations where no Notice was issued. Therefore this hearing dealt only with the Notice to End Tenancy for Unpaid Rent dated March 9, 2012 .

Both parties appeared and gave testimony during the conference call hearing.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and whether or not the landlord is entitled to monetary compensation for rental arrears.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated March 9, 2012 with effective date of March 13, 2012. Also in evidence was a copy of the tenancy agreement, copies of communications between the parties, a copy of the tenant's account ledger showing the accrued arrears and a copy of a Notice of Rent Increase issued on December 14, 2010, effective April 1, 2011.

The tenancy began in December 1996, at which time the tenant paid a security deposit of \$325.00. The landlord testified that the tenant had originally rented the unit with a partner and co-tenant but had later lived in the unit on her own.

The landlord testified that the current rent of \$782.00 did not include utilities or cable, as the tenant was required under the contract to pay 1/3 of utilities and 1/2 of the cable costs. The landlord testified that the tenant had permitted others to move into the unit and share it with her for extended periods of time. The landlord testified that this was in violation of the tenancy agreement which required that only the persons named on the

tenancy agreement were allowed to reside in the rental unit. According to the landlord, this meant that any new occupant be added to the tenancy agreement and must first be approved by the landlord. The landlord testified that the additional occupants caused a significant increase in the charges for hydro, and gas and therefore the landlord had requested that the tenant pay 50% of the utilities. The landlord testified that the cable services were recently discontinued because the charges had been increased.

The landlord testified that, although the rent had been properly increased from \$765.00 to \$782.00 in April, 2011, the tenant still continued to pay only \$765.00 for the 9-month period until December 2011. A copy of the Notice of Rent Increase was in evidence. The landlord testified that the tenant fell into arrears of \$153.00 during this period. The landlord testified that the tenant then began only to pay \$720.00 for each of the months of January 2012, February 2012 and March 2012 accruing a further \$186.00 in arrears for total rental arrears owed of \$339.00.

The landlord stated that, in addition to the above, the tenant also owed late fees of \$230.00 charged at \$10.00 per day. The rental account ledger showed that these charges were imposed, but not paid. The landlord testified that late fees were charged pursuant to a term in the tenancy agreement that provided that the tenant would be responsible for "late fees." However, no late-fee amount was specified in the contract.

The landlord testified that he served the tenant with the Ten Day Notice to End Tenancy, but she had not paid the amount owed, nor had she vacated the unit.

The tenant acknowledged that she did not file for dispute resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent. The tenant's position was that the rental arrears being claimed by the landlord were never owed.

The tenant testified that both parties had agreed that the rent of \$765.00 included all utilities. In regard to the alleged rent increase to \$782.00, the tenant stated that she was told that the rent increase Notice was not properly issued and therefore had no effect. The tenant stated that, for this reason, she disagreed with the landlord's claim of \$153.00 for the 9-month period from April 2011 including December 2011. With respect to the short payments for January, February and March 2012, the tenant stated that there was some difficulty with her social benefits and the funds would soon be paid.

The tenant pointed out that the landlord arbitrarily eliminated cable T.V. without notice from December onwards, for which the tenant had previously received a discount of 50% towards the cost. The tenant testified that she now has to pay her own cable at a cost of almost \$50.00 per month for basic cable service that had been part of the tenancy. The tenant claimed that this devalued her tenancy by at least \$25.00 per month. The tenant testified that, in addition, the landlord had severely restricted use of

the laundry facilities and is trying to terminate this amenity altogether. According to the tenant, laundry usage as part of the tenancy is valued at least \$20.00 per week.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice is cancelled, or dispute the notice by making an application for dispute resolution.

In this instance I find that the tenant was in arrears at the time the Notice was served on March 9, 2012 and the tenant did not pay the arrears.

I find that section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy will be ended..

I find that the tenant did not pay the outstanding rent within 5 days and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

With respect to the effective date for the Order of Possession, I find that, due to inaccuracies that may have affected the tenant's ability to comply with the Ten Day Notice and the landlord's contravention of numerous sections of the Act, the effective date will be June 30, 2012 instead of the date shown on the Notice.

In regard to rent owed, I find that the landlord has established a total monetary claim of \$339.00, comprised of accrued rental arrears from April 2011 to March 2012 inclusive.

With respect to the landlord's claim for \$230.00 in late fees, I find that this claim is not supported. Section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can 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. I note that section 72(2) of the *Regulation* prohibits the charge of this fee unless the tenancy agreement between the parties specifically provides for that fee. In this instance, the Landlord has submitted a copy of the tenancy agreement into evidence showing that the parties had both agreed to that the tenant would be responsible to pay a late fee as a term of the tenancy agreement. However, because amount is not stated in the contract the enforcement of the term is not possible. .

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

For this reason, I find that the portion of the landlord's application claiming late fees must be dismissed.

In regard to the landlord's attempt to impose additional costs on the tenant, to cover alleged increase in utilities, I find that section 14(1) states that a tenancy agreement may not be amended to change or remove a standard term and can only be amended to add, remove or change a term other than a standard term if both parties agree. Given the above, I find the Act does not permit the landlord to charge additional utility fees.

With respect to restricting facilities and services previously offered in the tenancy, I find that section 27(2) allows a landlord to terminate or restrict a service or facility, other than essential services, but only if the landlord gives 30 days' written notice, in the approved form,. The landlord must also reduce the tenant's rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

In the situation before me, I find the landlord decided to terminate the tenant's cable services and restricted her from using the laundry and the storage area without proper notification or reducing the rent. I find that this violated the Act.

Therefore, I find that the value of this tenancy had been reduced and a retroactive rent abatement must be imposed for the tenant's loss of cable in the amount of \$25.00 per month for the months of December 2011, January, February, March, April, May and June 2012, for a total rent abatement of \$175.00

I also find that there must be a rent abatement for the landlord's past restriction of laundry access and storage in the total amount of \$86.00.

Finally I find the tenant is entitled to \$240.00 for the landlord's total elimination of laundry facilities for the future months of April 2012, May 2012 and June 2012.

The total rent abatement for devaluation of the tenancy is \$501.00.

In setting off the amount owed to the landlord of \$339.00, from the \$501.00 rent abatement to which the tenant is entitled, I find that a balance of \$162.00 is still outstanding in favour of the tenant.

Accordingly, I find that the tenant must reduce her rent for April, May and June 2012 by deducting \$54.00 from the rent owed each month, making the remaining rent owed for each of these months \$728.00. This amount is due on the first day of each month.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective June 30, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby order that the tenant's rent for April 2012, May 2012 and June 2012 is reduced to \$728.00.

The remainder of the landlord's application, including the request to be reimbursed for the cost of the application is dismissed without leave.

The security deposit being held in trust for the tenant must be administered in accordance with section 38 of the Act.

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: April 10, 2012.

Residential Tenancy Branch