



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC
 MT CNR RR FF

Preliminary Issues

Upon review of the Landlord's evidence it was noted that the Landlord had submitted evidence relating to an Application they had filed June 4, 2012, through the Direct Request process seeking an Order of Possession and a Monetary Order. As the matters are significantly linked, and the proof of service documents required for the Direct Request Process were submitted with the Landlord's evidence, the *Residential Tenancy Branch* joined the two applications to be heard as cross applications in this participatory hearing.

At the outset of the hearing the Landlords agreed to have their application heard as cross applications during this participatory hearing. They confirmed they were seeking an Order of Possession for unpaid rent and requested that their monetary claim be considered for May 24, 2012 unpaid rent and the June 24, 2012 unpaid rent as the Tenants are still occupying the unit and have not paid anything towards either rent.

After consideration of the aforementioned I approve the Landlords' request to amend their application to include a claim for money owed or compensation for damage or loss under the Act for the unpaid rent that was due June 24, 2012, in accordance with section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Upon review of the Tenants' application, I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenants' request for more time to make their application and to set aside, or cancel the Landlord's Notice to End Tenancy for unpaid rent, and I dismiss the balance of the Tenants' claim with leave to re-apply.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants. Both applications were amended as per the preliminary issues listed above.

The Landlords' application is for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenants' application is for more time to make their application, an Order to cancel a notice to end tenancy for unpaid rent, and to recover the cost of the filing fee from the Landlords for their application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Tenants entitled to an Order to have a Notice to End Tenancy cancelled?
2. If not, are the Landlords entitled to an Order of Possession?
3. Are the Landlords entitled to a Monetary Order?

Background and Evidence

At the beginning of the hearing each party was asked to take an affirmation prior to providing their testimony. After affirming each person named as a tenant on the Tenants' application for dispute resolution I turned to the male Landlord who advised the male person attending this hearing on behalf of the Tenants was not a tenant. He noted that this male was not listed as a tenant or an occupant on the tenancy agreement. He confirmed the tenancy agreement was issued to the female Tenant, who was in attendance at this hearing, and her mother and that it listed both ladies and a third person as occupants.

The male occupant submitted that he was the person who sought out this rental unit and that he dealt directly with the male Landlord when viewing it and that he has occupied the unit since the tenancy began in 2010. He also advised that he was the

spouse of the female Tenant who was in attendance at this hearing and who was named on the tenancy agreement.

I explained to the participants that I would make a finding and record it in this decision relating to the male person's status. My findings relating to this matter can be found in my analysis below.

The Landlords confirmed they submitted 32 pages of evidence to the *Residential Tenancy Branch* in response to the Tenants' application however they did not serve the Tenants with this evidence.

The Tenant acknowledged that they filed their application for dispute resolution late however they were told by someone at the *Residential Tenancy Branch* that due to a mis-communication on how to file an application they would be granted an extension.

The parties agreed a tenancy agreement was entered into by the female Tenant in attendance at the hearing and her mother for a month to month tenancy that began on April 24, 2010. Rent is payable on the 24th of each month in the amount of \$1,000.00 plus \$125.00 for hydro, and on April 24, 2012 the Tenants paid \$500.00 as the security deposit.

The Tenant and Occupant confirmed that they did not pay the Landlords rent that was due on May 24, 2012 and they did not pay the rent that was due June 24, 2012. They advised that they attended the Landlords' residence on May 25, 2012, to deliver the Landlord their notice to end their tenancy and asked the Landlord to confirm he was holding their security deposit and a deposit that was allegedly paid for oil to heat the home. They advised that when the Landlord answered stating he was not holding the deposits they decided to withhold payment of their rent.

The Tenant advised that after their conversation on May 25, 2012, and their refusal to pay rent, the Landlords attended their residence and served the 10 Day Notice to end tenancy.

The Occupant submitted that they have found alternate accommodations and would be vacating the unit by July 1, 2012 and therefore they decided not to pay rent that was due June 24, 2012. The Tenant confirmed that they are still occupying the unit and have not paid May or June 2012 rent and that they do not have an Order issued by the *Residential Tenancy Branch* authorizing them to withhold their rent.

The Landlords submitted that they personally served the Notice to end tenancy on May 25, 2012. They advised that rent remains unpaid for May 24, 2012 and June 24, 2012, and they wish to proceed with obtaining an Order of Possession and Monetary Order for as soon as possible.

When I began to explain my decision to the Tenant and Occupant they became insistent that I explain how they could proceed from here as they will be seeking to overturn my Orders. It was evident that they did not like my explanation and they became argumentative. At this point I explained to all parties that this hearing was convened for me to hear the merits and facts of each case and not for me to provide guidance or instruction to either party. I pointed the parties to the telephone numbers listed at the bottom right hand corner of the Notice of a Dispute Resolution Hearing letter and directed them to call if they wished to seek answers to their questions.

I then attempted to clarify the addresses to which I was to send my decision at which point the Occupant attempted to re-engage in an argument with me. When I declined to engage and informed him that I would be disconnecting him from the hearing he finally acknowledged that I should send the Tenants' copy to the rental unit address.

Analysis

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas.

The *Residential Tenancy Glossary of Terms* defines a tenant as:

The person(s) who signed a tenancy agreement to rent a residential unit.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as a person, who is not named on the tenancy agreement as a tenant, and whom a tenant allows to move into the premises and share the rent. The new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, and occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find the male Applicant to the Tenants' dispute does not meet the definition of a tenant; rather he is an occupant. Accordingly the style of cause for the Tenants' application has been amended to include the two female

Tenants whom entered into the tenancy agreement with the Landlords, in accordance with section 64(3)(c) of the Act.

The Landlords confirmed that they did not provide the Tenants with copies of their evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Tenants have not received copies of the Landlords' evidence, which was submitted in response to the Tenants' claim, I find that evidence cannot be considered in my decision. I did however consider the Landlords' testimony.

Landlord's Claim:

Both parties confirmed service and receipt of the 10 Day Notice to end tenancy and confirmed rent remains unpaid for May 24, 2012 and June 24, 2012.

Order of Possession - I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenants failed to pay the rent within 5 days after receiving this notice. Therefore the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which is automatically corrected to June 04, 2012. The Tenants must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1,000.00 for May 24, 2012, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find the evidence proves the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the 24th of each month. I find the Landlords have met the burden of proof and I award them a monetary claim of **\$1,000.00** for May 24, 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended June 04, 2012, in accordance with the 10 Day Notice therefore I find the Landlord is seeking costs for occupancy and loss of rent for the period after June 24, 2012 given that the Tenants have failed to pay June 24, 2012 rent and are still occupying the unit. The Landlord will not regain possession of the unit until after service of the Order of Possession, and once they regain possession will need to advertise the unit and ready it for new tenants which will ultimately result in them losing an entire month's rental income.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, and I approve their claim for occupancy and loss of rental income for June 24, 2012 rent of **\$1,000.00**.

Monetary Order – I find that the Landlords are entitled to a monetary claim as follows:

Unpaid rent for May 24, 2012	\$1,000.00
Occupancy & Loss of income for June 2012	<u>1,000.00</u>
Amount due to the Landlord	<u>\$2,000.00</u>

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Tenants' application:

I have upheld the 10 Day Notice pertaining to the Landlords' application as noted above. Accordingly I dismiss the Tenants' application for more time and to have the Notice set aside.

As indicated in the preliminary issues the Tenants' claim for reduced rent for repairs, services or facilities agreed upon but not provided, has been dismissed with leave to reapply.

No findings of fact or law have been made in relation to an alleged oil tank deposit paid to the Landlords as this issue was not before me.

The Tenants have not been successful with their application; therefore I find they must bear the burden of the cost to file their own application.

Conclusion

The Tenants' application for reduced rent for repairs, services or facilities agreed upon but not provided, has been dismissed with leave to reapply.

The balance of the Tenants' claim has been dismissed.

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlords' have been awarded a Monetary Order for **\$2,000.00**. This Order is legally binding and must be served upon the Tenants.

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: June 27, 2012.

Residential Tenancy Branch