



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord requested to amend the application as an error was made. The landlord wanted to apply for an Order of Possession for cause. I have allowed the landlord to amend the application.

The tenant, the landlord and the landlords' agent attended the conference call hearing, gave sworn testimony and were given the opportunity to give 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.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the landlord has applied for a Monetary Order for damage to the unit, site or property. I find it is appropriate at this time to deal with the main issues which are an Order of Possession for cause and a Monetary Order for unpaid

rent. The tenant still has time until the end of the tenancy to rectify any damage caused during the tenancy; therefore I dismiss this section of the landlords claim with leave to reapply.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenant dialled into the call but warned that his cell phone battery was about to fail. The tenants left the call before any evidence was heard. The tenant dialled back into the call after the landlord had given their evidence and a brief recap of the landlord's testimony was made for the benefit of the tenant.

The landlord testifies that this month to month tenancy started on August 01, 2009. Rent for this unit is \$725.00 and is due on the last day of each month in advance.

The landlord's agent testifies that the tenant has been repeatedly late paying rent for nearly every month since December, 2011. The landlords agent testifies that four 10 Day Notices to End Tenancy were issued to the tenant on December, 23, 2011, February 02, 2012, March 05, 2012 and April 10, 2012. These notices have been provided in evidence by the landlord. The landlord has now issued a One Month Notice to the tenant on April 30, 2012. This Notice was served to the tenant in person and has an effective date of May 31, 2012. The Notices gives two reasons to end the tenancy as follows:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant or a person permitted on the residential property by the tenant has*

*(i) Significantly interfered with or unreasonably disturbed another occupant
or the landlord of the residential property,*

The landlord's agent testifies that the tenant has disturbed other tenants late at night by yelling loudly off his balcony. The police have been called and arrested the tenant. These incidents have occurred seven or eight times and as this is a multi family dwelling it has disturbed many of the other occupants.

The tenant does not dispute the landlord's claims that he has been repeatedly late paying his rent and the tenant agrees he did not dispute the One Month Notice to End Tenancy.

The landlord's agent testifies that the tenant owes rent for May and June, 2012 to a sum of \$1,450.00.

The tenant agrees he owes rent to the landlord of \$1,450.00. The tenant apologises to the landlord for everything and states he will be moving from the rental unit in the next few days.

Analysis

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent and the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) and 47(5) of the *Act* state that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the

tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The landlord served the tenant this notice in person to the tenant on April 30, 2012 and the notice has an effective date of May 31, 2012. The tenant did not dispute the notice within 10 days, therefore it is my decision that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The landlord is therefore entitled to an Order of Possession as at this time the tenant remains in possession of the rental unit.

With regard to the landlords application for a Monetary Order to recover unpaid rent; the tenant does not dispute the landlords claim for unpaid rent of **\$1,450.00**, consequently it is my decision that the landlord is entitled to a Monetary Order for this sum pursuant to section 67 of the *Act*.

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

Conclusion

I HEREBY FIND in favor of the landlord's claim for unpaid rent and the filing fee. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,500.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlords claim for a Monetary Order for damage to the unit, site or property is dismissed with 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: June 28, 2012.

Residential Tenancy Branch