



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, CNR

Introduction

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for unpaid rent or utilities and for breach of an agreement, and for a monetary order for unpaid rent or utilities. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The named landlord attended the conference call hearing and as agent for the landlord company. The tenant also attended. The parties both gave affirmed testimony and provided evidence in advance of the hearing, all of which has been reviewed and is considered in this Decision.

The landlord testified that the tenant served the landlord with the Tenant's Application for Dispute Resolution when the landlord attended at the rental unit to serve the tenant with the Landlord's Application for Dispute Resolution on June 29, 2012. The tenant did not dispute that testimony.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to an Order of Possession for breach of an agreement?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

This fixed-term tenancy began on September 3, 2010 and expired on March 3, 2011. The tenancy agreement states that at the end of the fixed term the tenant must vacate the rental unit, however, the parties agreed that the tenancy would remain as a month-to-month tenancy. Rent in the amount of \$2,000.00 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 from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord.

The landlord testified that the tenant had 4 room-mates, all of whom had rent paid by a government Ministry. The Ministry was sending the landlord 5 cheques per month, however in January, 2012 the tenant's cheques for January and February were not included. Then in March, 2012 the landlord only received 2 cheques. The landlord received \$1,700.00 for January, \$1,700.00 for February, \$950.00 for March, \$700.00 for April, \$950.00 for May and no rent was paid for June or July, 2012.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on June 13, 2012 and provided a copy for this hearing. The notice is dated June 13, 2012 and states that the tenant failed to pay rent in the amount of \$3,850.00 that was due on June 1, 2012 and contains an expected date of vacancy of June 23, 2012. When asked how the landlord arrived at the figure of \$3,850.00, the landlord firstly testified that June and July's rent were not included, then stated that he could not explain, but stated that if he made an error, he would stick by the \$3,850.00.

The landlord also testified that the tenant or the tenant's room-mates were engaging in illegal activity, but the landlord did not testify what kind of illegal activity. However, the landlord provided a copy of a letter dated June 15, 2012 from the City to the landlord stating that a complaint about unsightly property was received and confirmed by the writer on June 8, 2012. The notice states that a sofa, kitchen tables, heavy duty appliances and other items required removal before a re-inspection on June 25, 2012. The landlord testified that the tenant was notified but the items were not removed by that date.

When asked about the application for an Order of Possession for breach of an agreement, the landlord testified that the tenant was not served with a 1 Month Notice to End Tenancy for breach of an agreement.

The tenant testified that the landlord was provided with Shelter forms to sign and fax back to the Ministry, but the landlord failed to do so and the rent payments won't be made by the Ministry until the landlord does so. The tenant stated that 3 forms from the other tenants were dropped off in June, 2012 but the landlord did not fax them in and therefore didn't receive the rent. Further, the landlord was provided with forms for previous months as well. The rent is paid rent directly from the Ministry to the landlord, not from the Ministry to the tenant and then to the landlord.

Analysis

Firstly, in order to be successful in obtaining an Order of Possession for the tenant's failure to comply with an agreement, the landlord must serve the tenant with a 1 Month Notice to End Tenancy. In this case, the landlord testified that no such notice was issued, and therefore, the application cannot succeed.

With respect to the landlord's application for an Order of Possession for unpaid rent or utilities, the *Act* states that if a tenant doesn't pay rent when it is due the landlord may serve a notice to end tenancy. Once served the tenant has 5 days to pay the rent or dispute the notice. In this case, the landlord testified that the notice was served personally on June 13, 2012 and the tenant's application was filed on June 15, 2012.

The *Act* further states that a party who makes a claim must do whatever is reasonable to minimize the loss. In this case, the landlord did not dispute that forms are in his possession for rent for the month of June, but the landlord has not acted on them. It's also unclear whether or not the landlord has forms for previous months, however, I am not satisfied that the information contained in the notice to end tenancy is correct. The landlord stated that rent payments have been made as follows:

Month	Paid	Shortfall	Balance Due
Jan 2012	\$1,700.00	\$300.00	\$300.00
Feb 2012	\$1,700.00	\$300.00	\$600.00
Mar 2012	\$950.00	\$1,050.00	\$1,650.00
Apr 2012	\$700.00	\$1,300.00	\$2,950.00
May 2012	\$950.00	\$1,050.00	\$4,000.00
Jun 2012	0	\$2,000.00	\$6,000.00
Jul 2012	0	\$2,000.00	\$8,000.00

The notice to end tenancy states that the tenant failed to pay rent in the amount of \$3,850.00 that was due on June 1, 2012, and I find that according to the landlord's testimony, the tenant was in arrears \$6,000.00 on June 1, 2012. The landlord was not able to explain the amount recorded on the notice to end tenancy, but stated that the amount didn't include June or July's rent. According to the landlord's own testimony, I cannot accept that. I also find that the landlord has not done whatever is reasonable to

minimize the loss of rent. Therefore, the landlord's application for an Order of Possession must be dismissed. Further, I am not satisfied what amount is due to the landlord, and therefore, the landlord's application for a monetary order must be dismissed.

The landlord is at liberty to serve another notice to end tenancy if rent remains unpaid, but the landlord must be able to prove the amounts owed and that the tenant is put on notice for that amount of unpaid rent.

The *Act* also requires a party to serve an application for dispute resolution within 3 days of making it. The tenant did not serve the application within that time period, and therefore, the tenant's application must be dismissed.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for breach of an agreement is hereby dismissed.

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed.

The tenant's application for an order cancelling a notice to end tenancy is hereby dismissed.

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: July 09, 2012.

Residential Tenancy Branch