



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, MNDC and FF

Introduction

This hearing was convened on the landlord's application for a monetary award for unpaid rent, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As a matter of note, this tenancy has been the subject of two previous hearings, the first on May 4, 2012 and the second on June 22, 2012, with Decisions issued on May 8, 2012 and July 3, 2012 respectively.

In the present application, the landlord's request for an Order of Possession is dismissed as the tenants vacated the rental unit on July 2, 2012 and gave up any interest in the rental unit as verified by them and their legal counsel at the present hearing.

In addition, the landlord has requested loss of rent for the duration of the fixed term.

The landlord's claim for damage to the rental unit is dismissed with leave to reapply as the landlord stated during the hearing that he has not yet had access to the rental unit and could not have fully assessed the claimed damages.

Therefore, the present hearing is left to deal with the landlord's claim for unpaid rent for July 2012 and/or loss of rent to the extent such loss can be assessed.

Issue(s) to be Decided

Are the tenants responsible for paying the rent for July 2012 or for loss of rent thereafter?

Background and Evidence

This tenancy began on November 1, 2010 under a fixed term rental agreement set to end October 31, 2011, renewed on August 12, 2011 to continue for one year from November 1, 2011 and renewed again for November 2012 to July 30, 2013. Rent was \$3,700 per month to rise to \$3,900 for the third term, an agreement the landlord sought unsuccessfully to have voided at hearing to facilitate sale of the property.

The tenants paid a security deposit of \$3,500 on October 4, 2010, half of which was awarded back to them in the Decision of May 8, 2012 to conform with the half-month's rent limit set by section 19 of the *Act*. At the same time, the Dispute Resolution Officer awarded the tenants \$350 for the cost of removing trash from the property left behind by previous occupants and, by agreement of the landlord, \$165.34 over payment of utilities.

Therefore, the Dispute Resolution Officer ordered that the tenants could withhold half of the total award from each of the rent payments for June and July of 2012, leaving rent of \$2,517.33 due for each of those two months.

After the tenants paid that amount on June 1, 2012, the landlord issued a Notice to End Tenancy for unpaid rent leading to the hearing of June 22, 2012 in which, despite the landlord's pleadings that he had applied for a Review Hearing and had a Judicial Review application in process to contest the reduced rent orders, the Notice to End Tenancy was set aside as the rent had been paid in full in compliance with the order.

In addition, among other findings, the Officer found the Orders for repairs to be done by the landlord granted at the previous hearing had not yet been completed.

In the present matter, on June 22, 2012, the day of and following the last hearing, the tenants arrived home to have the landlords, M & S, jump through a hedge and launch an angry verbal assault on the tenant in front of the tenant's seven year old child. The landlord threw a 24-hour notice to enter the property through the car window.

The tenants emailed the landlord and expressed their wish to postpone the visit until the landlords' anger over losing at the hearing had subsided.

Nevertheless, the landlords and a person identified as a plumber appeared and on June 23, 2012 and were accessing the utility room. When they saw the tenant, they again began a verbal assault and attempted to force their way past the tenant at two entrances in turn, retreating when they overheard the tenant calling 911.

That same day, the landlords served the 30-day Notice to End Tenancy which was the presenting reason for the present hearing.

The tenants stated that the other notices to end the tenancy and the reactions to the previous hearings, contributed to the ongoing and escalating harassment stemming from the landlord's wishes to end the tenancy.

As a result, the tenants considered it the best interest of their family well being to simply vacate the rental unit as soon as possible. Consequently, they left the rental unit on July 2, 2012 and had stopped payment on the rent cheque for the month.

The tenants – who stated that they had become fearful of the landlord due to his conduct and that of his family – said that they attempted to advise the landlord, first by leaving keys with the downstairs tenant who promised to pass them to the landlord on July 3, 2012, second by sending him an email of July 5, 2012. (found in an earlier hearing to be an established and accepted medium of communication in this tenancy), and by registered letter sent on July 6, 2012.

The landlord denied receiving any of the notices and submits a copy of a Craigslist advertisement dated July 19, 2012 as evidence of his first attempts to find new tenants and minimize his losses.

Analysis

While I highly doubt the landlord's evidence that he did not receive keys from the downstairs tenant, or the tenants' email or letter, I note that the Notice to End Tenancy of June 23, 2012 set an end of tenancy date of July 24, 2012.

I further note that, in her decision of May 8, 2012, the Officer accepted the evidence of the tenants that the landlords had become acrimonious and retaliatory after the tenants had made application for dispute resolution for various repairs to the property. She found it appropriate to advise the landlords of the prohibition and consequences under section 95(2) of the *Act* against coercion, threats, intimidation or harassment related to a tenant's application or seeking of a remedy under the *Act*.

Yet the landlord issued an unfounded Notice to End Tenancy on June 2, 2012 for unpaid rent, when the tenants had, in fact, paid the rent exactly as ordered and leading to the hearing of June 22, 2012. In her decision of July 3, 2012, in setting the notice aside and noting that the landlord had not yet complied with the previous orders, the Officer repeated the earlier decision's reminder of the provisions of section 95 of the *Act*.

On the very day of that hearing, the landlord served the 24-hour notice to attend the rental unit in a manner that clearly caused alarm and severely distressed the tenant and the tenants' seven year old daughter.

The next day the landlord attempted to force his way into the rental unit to accommodate a service person despite the tenants' request that he not do so and served yet another Notice to End Tenancy of questionable merit. I find that such conduct, which viewed together with the non-compliance with previous orders and cautions, contributes to a pattern of abuse of process.

In brief, I find that the tenants' breach of the fixed term agreement was a direct and reasonable consequence of the landlord's breach of the duty to repair and maintain the property under section 32 of the *Act*, the landlord's breach of the covenant of quiet enjoyment codified at section 28 of the *Act*, and the landlord's breach of section 95(2) by intimidating and harassing the tenants for having sought a remedy under the *Act* by due process.

Consequently, I find that the tenancy was ended by the landlord – by vexatious notices to end the tenancy and by increasingly unprofessional conduct.

Therefore, as authorized under section 44(1)(f) and 62(3) of the *Act*, I hereby order that this tenancy ended on July 2, 2012.

Accordingly, I find that the tenants owe to the landlord the per diem rent for the first two days of July 2012 calculated as $2/31 \times \$2,517.33 = \162.41 and order that the landlord may retain this amount from the remainder of the security deposit.

Considering that the tenants are still owed the July portion of the half of the security deposit awarded to them in the May hearing, I find the remainder of the deposit to be \$3,500 less the \$875 taken in June 2012 for a total tenant credit remaining of \$2,625.

Having found that the tenancy ended on July 2, 2012 by the expressed wishes and actions of the landlord causing the tenants' concern for family safety and well being, the landlord's claim for loss of rent is dismissed **without leave to reapply**.

Conclusion

The landlord's request for an Order of Possession is dismissed as moot as the tenancy has ended.

The landlord's request for monetary compensation for damage to the rental unit is dismissed as premature as the landlord had not yet examined the rental unit.

The landlord's request for a monetary award for loss of rent is dismissed without leave to reapply as I find that the tenancy ended on July 2, 2012.

The landlord is authorized to retain \$162.41 from the tenants' security deposit in compensation for rent due for July 1 and July 2 of 2012. The balance of the security deposit remains to be disposed of 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: July 26, 2012.

Residential Tenancy Branch