



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, a by-law fine, and, authorization to retain the security deposit. Only the landlord appeared at the hearing.

The landlord identified two tenants in filing this application. The landlord testified that on June 13, 2012 he sent one registered mail package to both named tenants using the rental unit address. The registered mail was unclaimed. The landlord subsequently learned the male tenant had not been residing at the rental unit when the registered mail was sent. The female tenant vacated the rental unit on June 14, 2012. Concerned the female tenant would not receive the registered mail package before vacating the unit the landlord made a copy of the hearing package and personally served it upon the female tenant at the rental unit on June 14, 2012.

The Act requires that each respondent must be served with the Application for Dispute Resolution and provides for the permissible methods of service. Where registered mail is used to serve a tenant with a monetary claim, the registered mail must be sent to each tenant at the address at which the tenant resides or the tenant's forwarding address. Sending one registered mail package to two or more tenants is not sufficient service.

In this case, I found the male tenant was not sufficiently served with notice of the landlord's claims as the landlord sent only one registered mail package to two named tenants and the male tenant was no longer residing at the rental unit when the mail was sent. However, I was satisfied the female tenant was sufficiently served by way of personal service on June 14, 2012. Accordingly, I proceed to consider the landlord's claims against the female tenant and I have amended the application to exclude the male tenant.

Having heard the tenants have vacated the unit and the landlord has regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for unpaid rent?
2. Has the landlord established an entitlement to recover a by-law fine from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 25, 2011 and the tenants paid a \$500.00 security deposit. The tenants were required to pay rent of \$950.00 on the 25th day of every month pursuant to their written tenancy agreement. The tenants failed to pay rent on May 25, 2012 and on June 2, 2012 the landlord posted a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) indicating rent of \$950.00 was outstanding as of May 25, 2012 and \$50.00 for utilities. The tenants did not pay the outstanding rent and did not dispute the Notice.

The landlord explained the \$50.00 that appears on the Notice for “utilities” was actually the unpaid balance of a by-law fine the landlord paid to the strata corporation because of the tenants’ conduct. Upon my request, the landlord provided copies of documentation to substantiate the by-law fine levied against the landlord. The landlord provided to this documentation as requested.

The landlord is seeking to recover \$1,000.00 from the tenants for the unpaid rent and by-law fine.

During the hearing, the landlord stated there was also damage to the rental unit and requested he be permitted to amend the application. As the tenant(s) have not been put on notice that the landlord wishes to claim other damages or loss against them I did not permit an amended claim. Rather, I informed the landlord of his right to make a future Application for Dispute Resolution if he wishes pursue such damages or loss.

Analysis

Based upon the undisputed evidence before me, I accept that the tenants failed to pay rent of \$950.00 when due on May 25, 2012 under the terms of tenancy and the landlord is entitled to recover that amount.

Upon review of the documentation supplied to me with respect to the by-law fines, I find the landlord has shown that a total of \$100.00 was levied against him by the strata due to a violation of two different by-laws by the tenants: 1) swearing at the concierge and 2) smoking of marijuana. However, in order to succeed in recovering the by-law fine from the tenants, the landlord must establish that the tenants' conduct was a violation of the Act, Regulations or tenancy agreement. I make the following findings with respect to the by-law fine:

1. Under the Act, the landlord's remedy is to end the tenancy where a tenant is unreasonably disturbing or significantly interfering with other occupants of the property.
2. Section 7 of the Residential Tenancy Regulations provide that certain fees may be charged of a tenant; however, the only strata related charges included in section 7 are the move-in and move-out fee charged by a strata.
3. The tenancy agreement is silent with respect to by-laws or by-law fines. Nor was I provided evidence the tenants were provided copies of the by-laws before fines were levied.

In light of the above, I find the landlord established the tenants breached strata by-laws but I am not satisfied that the tenants breached a term of their tenancy agreement or the Act that would otherwise entitle the landlord to recovery of by-law fines. I, therefore, dismiss this portion of the landlord's claim.

I award the \$50.00 filing fee to the landlord as the landlord was successful with the majority of this application. I further authorize the landlord to retain the security deposit in partial satisfaction of the rent owed to the landlord.

Based upon the foregoing, the landlord is provided a Monetary Order in the amount of \$500.00 [\$950.00 rent + \$50.00 filing fee – \$500.00 security deposit] to serve upon the tenant and enforce as necessary.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order in the amount of \$500.00 to serve upon the female tenant and enforce as necessary.

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 3, 2012.

Residential Tenancy Branch