



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MNR, MNSD, MNDC, FF
Tenants: CNC

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for cause.

An agent for the landlord company and one of the tenants attended the conference call hearing and both gave affirmed testimony. The landlord provided evidentiary material in advance of the hearing and the parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service of documents or evidence were raised during the hearing.

Issue(s) to be Decided

- Has the landlord established a claim for an Order of Possession for unpaid rent or utilities?
- Has the landlord established a claim for an Order of Possession for cause?
- Has the landlord established a claim for a monetary order for unpaid rent or utilities?
- Has the landlord established a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

The parties agree that this month-to-month tenancy began on November 1, 2007 and the tenants still reside in the rental unit. Rent in the amount of \$1,050.00 per month is payable in advance on the first day of each month in addition to a parking fee of \$25.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlord.

The landlord's agent testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on August 24, 2012 which was personally delivered to one of the tenants. A copy of the notice was provided for this hearing and it is dated August 24, 2012 and contains an expected date of vacancy of September 30, 2012. The reasons for ending the tenancy are stated in the notice as:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - Put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's agent further testified that the tenants have been continually late paying rent and provided a number of copies of notices to end tenancy dated August 2, 2012, April 3, 2012, January 3, 2012, March 3, 2011, February 3, 2011, December 4, 2010, August 4, 2010, July 2, 2010, October 3, 2009, and November 3, 2008.

The tenants again failed to pay rent when it was due for the month of September, 2012, and on September 3, 2012 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing both pages of the 2-page form to one of the tenants on September 3, 2012 and the tenant acknowledged receipt by signing a Proof of Service form provided by the landlord's agent. A copy of that notice was provided for this hearing and it is dated September 3, 2012 and contains an expected date of vacancy of September 13, 2012. The notice states that the tenants failed to pay rent in the amount of \$1,075.00 that was due on September 1, 2012.

The landlord further testified that there have been a number of police incidents regarding the tenants. Firstly, the tenants allowed another person to sleep in a locker room downstairs in the rental building. The police were called and the person was removed from the building, and the tenant later apologized to the landlord's agent in a letter in May, 2012. Another incident occurred on August 20, 2012 when 2 men broke into the tenants' rental unit and a fight ensued, leaving damage to the rental unit and blood. An ambulance was called during that incident. The manager talked to the tenant who denied that it was a targeted attack. Two weeks later a lady was outside the tenants' door and she was high on drugs. Police and an ambulance were called again, and the tenant told the landlord's agent that he did not know who the lady was.

The tenant testified that the 2 men who broke into the rental unit were not invited or known to the tenant. They kicked in the door trying to rob the tenant. The tenant was being accused of letting them in by the landlord's agents, but the tenant did not let them in. The men busted the tenant's face and he would not let anyone in to do that.

The tenant agreed that rent has been late, and no rent has been paid for September or October, 2012; the tenant was waiting for the determination of this hearing.

Analysis

Firstly, with respect to the 1 Month Notice to End Tenancy for Cause, the landlord's agent testified to a number of incidents but was not present during those incidents. There is no evidence before me to substantiate the testimony of the landlord's agent. Where a tenant has disputed a notice to end tenancy, the onus is on the landlord to prove the reasons contained in the notice. I do accept, however, that the tenants have been repeatedly late paying rent as evidenced by the notices to end tenancy provided by the landlord for previous months.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants have not disputed that notice. The *Residential Tenancy Act* states that once served, the tenants have 5 days to pay the rent in full or dispute the notice. If the tenants do neither, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I have reviewed the notice and I find that it is in the approved form and contains information consistent with the testimony. Further, the tenant testified that rent for September and October, 2012 have not been paid. Therefore, I must find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being September

13, 2012. During the course of the hearing, the landlord agreed that the Order of Possession should be effective October 14, 2012.

With respect to the landlord's claim for a monetary order for unpaid rent or utilities, I find that the landlord has established a claim for 2 month's rent, in the amount of \$1,075.00 for each month which includes parking, for a total of \$2,150.00.

Since the landlord has been successful with the application, the landlord is also entitled to recover the \$50.00 filing fee for the cost of the application from the tenants.

In the circumstances, having found that the tenants are indebted to the landlord for \$2,200.00, I order the landlord to keep the security deposit and interest totalling \$483.34 in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference of \$1,716.66.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective October 14, 2012 at 1:00 p.m.

I further order the landlord to keep the security deposit and interest totalling \$483.34 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,716.66.

This order is final and binding on the parties and may be enforced.

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: October 11, 2012.

Residential Tenancy Branch