



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord 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; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the hearing date. However, despite being each individually personally served with the Landlord's Application for Dispute Resolution and notice of hearing documents on October 31, 2012, none of the tenants attended. The landlord testified to serving the tenants on that date and in that manner, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on March 15, 2011 as a fixed term tenancy which expired on September 15, 2011. The tenants wanted to remain in the rental unit after that date, and the landlord agreed but the parties did not get together to

sign another tenancy agreement until March 1, 2012. A copy of that tenancy agreement was provided for this hearing, which contains an expiry date of the fixed term of September 15, 2012.

The landlord further testified that rent in the amount of \$1,450.00 per month is payable in advance on the 1st day of each month, although the tenancy agreement states that rent is due on the 1st day of the rental period, but does not indicate a date. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$675.00 as well as a pet damage deposit in the amount of \$100.00, and both deposits are still held in trust by the landlord. No move-in condition inspection report was completed, but the landlord testified that the parties walked through the rental unit to note its condition at the commencement of the tenancy.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause on September 14, 2012 and served each of the 3 tenants with a copy personally on that date. A copy of the notice was provided for this hearing, and it is dated September 14, 2012 and contains an expected date of vacancy of October 14, 2012. The reasons for issuing the notice are: Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and jeopardize a lawful right or interest of another occupant or the landlord. The landlord has not been served with an application for dispute resolution by the tenants seeking an order to cancel the notice.

The landlord further testified that the tenants failed to pay rent in full for the month of October, 2012, leaving a balance outstanding of \$75.00. The tenants further failed to pay rent in full for the month of November, 2012, leaving a balance of \$1,091.00 outstanding, for a total claim of \$1,166.00 for unpaid rent. The landlord has not served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the tenants promised to pay the outstanding amounts, but have failed to do so.

The landlord also testified that the City had sent the landlord a warning letter indicating that the premises of the rental unit was unsightly which was contrary to the city's by-laws. A copy of the letter was provided for this hearing and it is dated June 19, 2012 citing a large accumulation of domestic garbage and discarded material, which was noticed during an inspection of the rental property on June 18, 2012. The landlord told the tenants they had to clean up garbage and debris and abide by the by-law enforcement letter. The tenants stated that they would comply but did not. A By-law Enforcement Inspection Report dated July 25, 2012 has been provided, which provides the landlord an opportunity to comply by August 6, 2012, and the comments section of the document states:

- “Please remove the graffiti located on your building. The graffiti is located on the back shed. Also, a discarded TV and other garbage in the back that needs to be removed. And, along with the fence line there is tall grass that needs to be cut. Please do so by the due date. Permit Unsightly Premises Fines: \$150.00.”

The landlord was levied a fine by the City on August 8, 2012 and paid \$100.00 on August 27, 2012. The landlord attempted to collect that from the tenants but they replied that they had no money. A copy of the ticket and its accompanying letter from the City were provided as evidence.

The City sent the landlord another warning letter and levied another fine for unsightly premises, and provided a copy of the by-law ticket as evidence for this hearing. The tickets indicate that the fines are \$150.00 but would be reduced to \$100.00 if paid within 14 days, and \$200.00 if paid after 28 days. The landlord testified that \$200.00 was paid by the landlord on November 7, 2012, who again requested the money from the tenants but the tenants replied that they had no money. The landlord also provided photographs of the yard of the rental unit showing debris scattered.

The landlord also provided a copy of a note from one of the tenants, which states: “To whom it may concern: I am making every effort to find housing for my family and I for Nov 1/2012, my rent is paid in full till 31 of October 2012. I was not given a legal eviction order by landlord to date, Oct 19/2012. I am willing to go to arbitration if need be,” and is signed by one of the tenants with the tenant’s name printed underneath that signature.

The landlord claims \$300.00 for fines levied by the City, unpaid rent in the amount of \$1,166.00, an Order of Possession and recovery of the \$50.00 filing fee for the cost of the application.

Analysis

The *Residential Tenancy Act* states that if a tenant is served with a notice to end tenancy for cause, the tenant must apply for dispute resolution to dispute the notice within 10 days of service, or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date. I have reviewed the notice issued by the landlord, and I find that it is in the approved form, but contains an incorrect effective date of vacancy. The *Act* requires that if rent is payable on the 1st day of the month, and the landlord testified that it is payable on the 1st day of each month, the notice to end tenancy must be effective on a date that is not earlier than one month after the date the notice is received, and must be the day before the day in the month that rent is payable under the tenancy agreement. I accept the

landlord's testimony that rent is payable on the 1st day of each month, and the notice to end tenancy must have an effective date of vacancy of October 31, 2012 if it was issued in September, 2012. The *Act* also states that incorrect effective dates contained in a notice to end tenancy are automatically corrected to the nearest date that complies with the *Act*, and I find that the effective date of vacancy in this case is automatically changed to October 31, 2012.

I further find that the tenants have not disputed the notice and are conclusively presumed to have accepted that the tenancy ended on October 31, 2012, and the landlord is entitled to an Order of Possession.

With respect to the monetary claim for unpaid rent, I accept the affirmed undisputed testimony of the landlord and I find that the tenants are in arrears of rent the sum of \$1,166.00.

With respect to the remaining monetary claim made by the landlord, in order to be successful in a damage claim, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

The *Residential Tenancy Act* places the onus on the landlord to complete a move-in condition inspection report in accordance with the regulations before a tenant moves into a rental unit or at another mutually agreed date. The regulations also state that the report is evidence of the condition of the rental unit at the commencement of the tenancy. The landlord testified that no move-in condition inspection report was completed, but the parties walked through the rental unit noting its condition. However, in the absence of a move-in condition inspection report, I have no evidence before me with respect to the condition of the yard at the outset of the tenancy. Therefore, I find that the landlord has failed to satisfy element 2 in the test for damages.

In summary, I find that the landlord has established a claim for an Order of Possession on 2 days notice to the tenants. I further find that the landlord has established a claim as against the tenants for unpaid rent in the amount of \$1,166.00. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,216.00.

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: November 22, 2012.

Residential Tenancy Branch