



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; 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 evidence prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 14, 2013, neither of the tenants attended. The landlord testified that the documents were served on that date in that manner, and also by personally handing the documents to one of the tenants. The landlord was permitted an opportunity to prove the service of the documents, and a facsimile was received showing that on January 12, 2013 the landlord served only one of the tenants by registered mail. I am satisfied that one of the tenants, being the first named tenant on the Landlord's Application for Dispute Resolution has been served in accordance with the *Residential Tenancy Act*. I am not satisfied that the other tenant was served in accordance with the *Residential Tenancy Act*, and the landlord's application with respect to that tenant is dismissed.

The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord.

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 unpaid rent or utilities?
- Has the landlord established a monetary claim for unpaid rent or utilities?

- Has the landlord established a monetary claim 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2012. Rent in the amount of \$1,650.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$825.00 and no pet damage deposit was collected.

The landlord further testified that the tenants were always late with the rent, but always provided a date that it would be paid. However, in January, 2013 the tenants advised that they didn't have the rent money and didn't provide a date for payment.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 5, 2013 by personally handing it to the spouse of one of the tenants, who appears to reside in the rental unit. A copy of the notice was provided prior to the commencement of this hearing, however only one page of the 2-page document has been provided. The landlord testified that page 2 of the document is on the back side of page 1, and that the document handed to the person contained pages 1 and 2.

The landlord also testified that the tenants were to pay utilities, and a copy of the tenancy agreement was provided for this hearing which indicates that the only utilities included in the rent are water and garbage collection. The tenants' power was disconnected by the utility company and the tenants were not able to have it reconnected without paying the bill. The tenants managed to have the account re-activated in the landlord's name and have left a balance due on the account in the amount of \$107.29. No evidence of that has been provided.

The landlord further testified that the tenants have not provided a forwarding address but one of the tenants sent a text message to the landlord stating that more time was needed to vacate the rental unit than provided on the notice to end tenancy. The landlord believes that the tenants vacated about a week after serving the notice to end tenancy, but requests an Order of Possession.

The rent for the month of January, 2013 has not been paid, and the landlord requests a monetary order for unpaid rent as well as loss of revenue for February, 2013, recovery of the utility bill, and permission to keep the security deposit.

Analysis

The *Residential Tenancy Act* states that on any day after the date rent is payable under the tenancy agreement rent remains unpaid, the landlord may serve the tenant with a notice to end tenancy. Once served, or deemed served, the tenant has 5 days to pay the rent in full or apply for dispute resolution to dispute the landlord's notice. If the tenant does neither, 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.

In this case, I accept that the landlord served the appropriate notice to end the tenancy for unpaid rent for the month of January, 2013. The tenants did not pay the rent and did not dispute the notice and therefore, I find that the landlord is entitled to an Order of Possession.

With respect to the request for a monetary order, I am satisfied that the tenants have not paid rent for the month of January, 2013 and the landlord is entitled to a monetary order in the amount of \$1,650.00.

The landlord testified that the tenants are believed to have moved out about a week after the notice to end tenancy was served, and testified that it was served on January 5, 2013. The landlord further testified that one of the tenants sent a text message requesting additional time to move out. In the circumstances, I find that the landlord was not able to re-rent the unit for the month of February, 2013, and the landlord is entitled to a monetary order in the amount of \$1,650.00.

With respect to the unpaid utilities, I have no evidence before me to support the landlord's claim that the tenants managed to re-activate a power account with a utility company in the landlord's name. I further have no evidence to substantiate the amount of unpaid utilities that the landlord has claimed. Therefore, the landlord's claim for unpaid utilities must be dismissed.

Since the landlord has been substantially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord currently holds in trust a security deposit in the amount of \$825.00 which I find should be set off from the amount due to the landlord.

In summary, I find that the landlord is entitled to an Order of Possession and has established a monetary claim in the amount of \$3,350.00. I order that the landlord keep the \$825.00 in partial satisfaction of that monetary claim, and I grant the landlord a

monetary order for the difference in the amount of \$2,525.00 as against the first named tenant only.

With respect to the second named tenant, I find that the tenants entered into the tenancy jointly and severally. The *Residential Tenancy Act* requires a party to serve each party when making an application for a monetary order. The landlord did not do so in this case, and I find that the landlord's application for a monetary order with respect to that tenant must be dismissed.

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 order the landlord to keep the security deposit in the amount of \$825.00 and I grant the landlord a monetary order in the amount of \$2,525.00 as against the first named tenant.

The landlord's application for a monetary order as against the second named tenant is hereby dismissed without leave to reapply.

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: February 06, 2013

Residential Tenancy Branch

