



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order for unpaid rent;
2. An Order to retain the security and/or pet deposit; and
3. An Order to recover the filing fee pursuant to Section 72.

The tenants did not appear. The landlord gave evidence that she served a one month Notice to End Tenancy on the tenants in person on December 30, 2012. The landlord also testified that she served the Landlord's Application for Dispute Resolution on the tenants also in person on January 26, 2012.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Is the landlord entitled to monetary order for unpaid rent, permission to retain the security deposit in partial satisfaction of any rental arrears and recovery of the filing fee?

Background and Findings

The landlord testified that this tenancy began on July 1, 2012 with rent fixed at \$900.00 per month. The tenants paid a \$450.00 security deposit at the start of the tenancy.

The landlord testified that the tenants have been frequently late paying their rent. The landlord therefore issued a 1 month Notice to End Tenancy for cause (repeated late payment of rent) dated December 27, 2012 and served on the tenants on December 30, 2012 in person.

The landlord testified that she filed the Application for Dispute Resolution, which is the subject of this hearing, on January 25, 2013. The landlord testified that she originally sought an Order of Possession, a monetary Order for unpaid rent, an Order to be allowed to retain the security deposit and an Order to recover the filing fee paid for this application. The landlord testified that when she attended Service BC to file her application a clerk reviewed the application and advised she could not make an application for both a monetary order and an Order of Possession. The landlord says she was confused by this advice so the clerk instructed her to use a Service BC phone to call the Residential Tenancy Branch. The landlord testified that she and the clerk spoke to the Residential Tenancy Branch and this advice was confirmed. The landlord testified that the clerk at Service BC then "whited out" the landlord's request for an Order of Possession on the application and landlord initialled the changes as instructed by the clerk. The landlord testified that she served this Application on the tenants in person on January 26, 2013.

The landlord testified that since serving the Application for Dispute Resolution the tenants have now paid the rental arrears of \$510.00 for December 2012 and \$800.00 for January 2013 as claimed. However, the landlord says that the tenants have paid only \$500.00 towards February's rent. The landlord submits that she would like a monetary Order for February's rental arrears of \$400.00 plus recovery of the filing fee paid for this application. In addition, the landlord seeks to retain the \$450.00 security deposit she is holding and she says the tenants have not vacated in accordance with the Notice which was effective January 31, 2012 so she is also seeking an Order of Possession.

Analysis and Findings

I have before me an application seeking, amongst other things, rental arrears for December 2012 and January 2013. The landlord has testified that those arrears have now been paid. The claim for those arrears is therefore dismissed as they have been satisfied.

At the hearing the landlord requested an Order of Possession based on an undisputed Notice to End Tenancy served December 30, 2012. Normally, such an Order would be issued but in this case I am not satisfied that the tenants have had notice that the landlord would be seeking such an Order at this hearing. I am not satisfied because, for whatever reason and I have no reason to doubt the landlord's testimony, the request for an Order of Possession was removed from the landlord's Application for Dispute Resolution. The landlord then initialed this change served this Application on the

tenants. The rules of natural justice dictate that parties are entitled to know the full case being brought against them because the request for an Order of Possession was removed from the application the tenants have not been notified that the landlord would be seeking to end this tenancy at this hearing. This is especially so because the evidence of the landlord is that the tenants have now paid the arrears. In short, the tenants have not had notice of the landlord's intention to seek an Order of Possession and because the application before me contains no such request I will not issue an Order of Possession. However, the landlord remains at liberty to apply for an Order of Possession.

With respect to the landlord's request for February arrears of \$400.00 the application before me seeks arrears created in December and January which have now been paid. There is no application before me for February arrears. This request is therefore declined but again, the landlord remains at liberty to apply for an order in this regard.

As this tenancy is continuing and no monetary Order has been made, the landlord's application seeking to retain the security deposit is dismissed.

As the landlord has been unsuccessful in this claim her request for the recovery of the \$50.00 filing fee is also dismissed.

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 20, 2013

