



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. A Monetary Order for Damages to the unit – Section 67
4. An Order to retain the security deposit / pet deposit - Section 38
5. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been personally served with the application for dispute resolution in accordance with Section 89 of the *Residential Tenancy Act* (the Act) the tenant did not participate in the conference call hearing.

The landlord's representative was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenant still resides in the unit. Rent in the amount of \$720.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant which was *conditionally* reduced by an Arbitrator's Decision dated November 23, 2013 to \$57.62 in order to satisfy all rent arrears to that date. The landlord's action claims that since then the tenant has failed to pay rent and on February 05, 2013 the landlord gave the tenant a notice to end tenancy for non-

payment of rent stating that on February 01, 2013 the tenant owed \$720.00 in unpaid rent.

The landlord provided a Resident Ledger starting June 2011 stating that on January 29, 2013 the tenant had a credit of \$377.62 and by February 02, 2013 the tenant owed \$362.38 after February rent and a late fee of \$20 was factored.

The ledger does not include a credit to the tenant from their security deposit as authorized by the November 23, 2013 Decision. The landlord's representative testified they were not sure if the tenant caught up their rent - therefore the security deposit may not have been accessed – the ledger does not reflect such an entry. In their testimony the landlord's representative was not sure if the tenant's rent was actually in arrears on February 05, 2013. The landlord's representative acknowledged that had the security deposit been credited to the tenant the tenant's ledger would not have reflected any arrears as of November 23, 2013 or February 2013. Regardless, the landlord acknowledged that their ledger did not state the tenant was in arrears of \$720.00 on February 01 or 05, 2013 – but rather \$342.38 – which included 2 late fees totalling \$40.00.

The landlord acknowledged receipt of rent from the tenant's *payer* at the end of February 2013, which they purport, is for March 2013.

The landlord seeks an Order of Possession and the purported unpaid rent. The landlord also seeks to recover a fee of \$945.00 paid by the landlord to _____ in April 2012 to assist the landlord in dealing with the tenancy, which they claim was necessary, although the tenancy ultimately continued.

Analysis

Based on the landlord's testimony and their document evidence, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find this notice was not valid. The landlord has not proven that the tenant was in arrears on February 01 or 05, 2013. I find that the landlord's ledger may reflect their global accounting practices toward the tenant but it is not solely the verifier of rent payments. As example, I find the ledger includes a charge of \$209.38 in July 2012 for *repairs* charged to the tenant, an *Arbitration Fee of \$50.00 in October 2012*, and *7 late fees over 18 months totalling \$140.00* – none of which is payable rent. I further find that had the landlord credited the tenant the previously authorized amount from the security deposit of \$302.38 their ledger would not currently reflect arrears so as to justify \$60.00 in subsequent late fees – all to the claimed sum of \$362.38 – as reflected in the landlord's ledger. I find that, at best, this amount is comprised of charges other than rent.

It must be noted that as per the Decision of November 23, 2013, it remains available to the landlord to retain \$302.38 from the tenant's security deposit *if the landlord determines there is a shortfall in rent*.

As a result of all the above, I find the landlord has not proven the tenant was, or is now, in arrears of rent. Based on all the above evidence I find that the landlord did not give the tenant a valid Notice to End necessitating the tenant to dispute the Notice. The landlord is not entitled to an Order of Possession, and this claim is **dismissed**, with the result that the tenancy continues.

I find the landlord chose to employ the services of a contractor in April 2013 for \$945.00 to deal with the tenancy. I find the landlord's choice for dealing with the tenancy issues was discretionary and that the tenant is not responsible for the landlord's choice to do so therefore the landlord must bear the cost of their choice. **I dismiss** this portion of the landlord's claim, without leave to reapply.

I find the landlord did not provide evidence to support their claim for *damages* to the unit as is included in their application; therefore any such claim is **dismissed**.

Effectively, I find the landlord is not entitled to their monetary claims, which are **dismissed**, without leave to reapply.

Conclusion

The landlord's application is **dismissed** in its entirety, without leave to reapply.

This Decision is final and binding on both parties.

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: March 19, 2013

Residential Tenancy Branch