



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROBERTS APARTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order for Possession for unpaid rent and cause. The landlord also applied for a Monetary Order for unpaid rent, unpaid utilities, damage to the unit; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord indicated during the hearing that she wished to withdraw the claims for utilities and damage to the unit and proceed with the monetary claim for unpaid rent only. As the claim for damage is premature given the tenants are still in possession of the rental unit and the landlord's request for amendment reduces the total amount claimed, I found the request non-prejudicial and I have amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent for May 2013?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 1, 2012 and the tenants paid a security deposit of \$475.00. The tenants are required to pay rent of \$950.00 on the 1st day of every month. The landlord has issued several 10 Day Notices to End Tenancy to the tenants since their tenancy began. The two most recent Notices, which are the subject of this Application, are as follows:

- On April 1, 2013 the landlord served the female tenant, in person, with a 1 Month Notice to End Tenancy for Cause with a stated effective date of April 30, 2013.
- On April 5, 2013 the landlord served the female tenant, in person, with a 10 Day Notice to End Tenancy for Unpaid Rent with a stated effective date of April 15, 2013 indicating that rent of \$950.00 was outstanding as of April 1, 2013.

It was undisputed that the tenants paid the outstanding rent for April 2013 by way of two installments of: \$250.00 paid on April 16, 2013 and \$700.00 paid on April 25, 2013. It was undisputed that the tenants have not paid any rent for the month of May 2013 and the tenants are still in possession of the rental unit.

The landlord requested recovery of \$950.00 in unpaid and/or loss of rent for the month of May 2013 as well as an Order of Possession effective as soon as possible or May 31, 2013.

The tenants submitted that the rent for April 2013, thus cancelling the 10 Day Notice. The tenants explained that the rent for May 2013 was not paid because the landlord went to the Income Assistance office which caused the tenants' benefits to cease. The tenants were uncertain as to when the landlord went to the Income Assistance office but read from a letter dated May 6, 2013 issued to them by the Income Assistance office.

The tenants also submitted that the landlord informed the tenants that the 1 Month Notice would be withdrawn if the tenants paid their rent in full. Since they paid the April 2013 rent in full they are of the belief the 1 Month Notice has been cancelled.

In response, the landlord stated that she went to the Income Assistance office on May 6, 2013 to request a cheque for May's rent payable directly to the landlord and a cheque for utilities payable to the City. The landlord denied that she told the tenants the 1 Month Notice would be withdrawn with payment of the outstanding rent. Rather, the landlord submitted that she informed the tenants that the 10 Day Notice would be nullified if they paid the outstanding rent.

Analysis

When a tenant receives a 1 Month Notice the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If a tenant does not file to dispute the 1 Month Notice then, pursuant to section 47 of the Act, the tenant is conclusively

presumed to have accepted the tenancy would come to an end and must vacate the rental unit by the effective date.

It is possible for a Notice to End Tenancy to be withdrawn but a withdrawal must be by agreement of both parties. In this case, I was presented with disputed verbal testimony that the 1 Month Notice was withdrawn. I accepted the explanation that the discussion with the tenants about cancelling a Notice to End Tenancy upon payment of the outstanding rent pertained to the 10 Day Notice as being more likely. Ultimately, I find the disputed verbal testimony insufficient to conclude that the 1 Month Notice was withdrawn by mutual agreement between the parties. Therefore, I uphold the 1 Month Notice and find that it remains enforceable.

Since the 1 Month Notice was served to the tenants on April 1, 2013 the effective date should read May 31, 2013 as required by section 47 of the Act. The effective date automatically changes to comply with the Act and reads May 31, 2013 pursuant to section 53 of the Act.

In light of the above, I find the tenancy ends on May 31, 2013 and I provide the landlord with an Order of Possession to serve upon the tenants with an effective date of May 31, 2013.

As the tenancy is ending in the very near future based upon the undisputed 1 Month Notice I find it unnecessary to further analyze the validity or enforceability of 10 Day notice dated April 5, 2013.

Having heard that the tenants have continued to occupy the rental unit for the month of May 2013 without paying rent I award the landlord unpaid and/or loss of rent for the month of May 2013 in the amount of \$950.00, as requested.

I find the tenants' argument that the landlord's visit to the Income Assistance office on May 6, 2013 is not a basis for denying the landlord's claim for May's rent, especially considering the assistance payment for May 2013 was provided to the tenants at the end of April 2013.

I further award the filing fee to the landlord, bringing the landlord's total award to \$1,000.00. The landlord is authorized to retain the tenants' security deposit in partial satisfaction of this award. Therefore, a Monetary Order in the net amount of \$525.00 is provided to the landlord to serve upon the tenant's.

Conclusion

The landlord has been provided an Order of Possession effective May 31, 2013. The landlord has been authorized to retain the tenants' security deposit and has been provided with a Monetary Order for the balance of \$525.00 for recovery of May 2013 rent and the filing fee.

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: May 29, 2013

Residential Tenancy Branch