



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and utilities and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:13 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed both tenants copies of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on May 20, 2013. The landlord testified that he handed both tenants a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on June 5, 2013.

The landlord testified that he handed both tenants a copy of his dispute resolution hearing package on June 5, 2013. I am satisfied that the landlord served this package to the tenants in accordance with the *Act*.

At the hearing, the landlord said that he is uncertain as to the extent of the damage to the rental unit as he has not yet been able to gain access to the rental unit. Under these circumstances, I advised the landlord that I considered his application for a monetary award was premature. The landlord withdrew his application for a monetary award for damage. He is at liberty to apply for a monetary award for damage once he obtains access to the rental unit and assesses any damage that may have arisen during the course of this tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent or utilities? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy began by way of an oral agreement between the parties in May 2012. The landlord testified that utilities were included in the original oral agreement for this tenancy. At this time, the landlord testified that monthly rent was set at \$1,025.00, payable in advance by the first of each month. He testified that during the course of the tenancy he started charging the tenants an extra \$200.00 for utilities because the tenants had allowed many more occupants to take up residence in this rental unit. The landlord said that he continues to hold the tenants' \$500.00 security deposit.

The landlord gave sworn testimony that the tenants have not paid anything towards their May or June 2013 rent.

Analysis- Notices to End Tenancy

At the hearing, the landlord described the 10 Day Notice that he said he handed to the tenants on May 20, 2013. He testified that the 10 Day Notice identified June 1, 2013 as the effective date to end this tenancy. His application for dispute resolution specifically requested an Order of Possession on the basis of the 10 Day Notice he issued on that date to the tenants. The landlord maintained that he submitted a copy of the 10 Day Notice to the RTB at the time he filed his application. As a copy of the 10 Day Notice was not attached to the landlord's application, the landlord was given until the end of the day of the hearing to fax a copy of this application to the RTB.

After the hearing, the landlord faxed the RTB a short note in which he stated that he had no copy of any 10 Day Notice issued to the tenants and had not provided a copy of that Notice to the RTB.

Without a copy of a properly completed 10 Day Notice, I am not prepared to issue an Order of Possession to end this tenancy. I dismiss the landlord's application to end this tenancy on the basis of any 10 Day Notice issued to the tenant in May 2013.

The landlord entered into written evidence two different copies of the 1 Month Notice. On one of these 10 Day Notices, he did not insert a date. On the other 10 Day Notice, he identified June 5, 2013 as the date of the Notice. He testified that he handed both

tenants a copy of the 1 Month Notice dated June 5, 2013. The stated reason cited in the landlord's 1 Month Notice was that the tenants were repeatedly late in paying their rent. In accordance with the Residential Tenancy Branch's (RTB's) Policy Guideline 38, a landlord seeking an end to a tenancy for cause needs to establish that a tenant has been late in making monthly rent payments on at least three occasions.

While the tenant supplied two copies of the 1 Month Notice, he did not apply for an Order of Possession for cause on the basis of the 1 Month Notice. The 1 Month Notice provided to the tenant identified July 1, 2013 as the effective date to end this tenancy. According to the *Act*, the earliest date when a 1 Month Notice issued on June 3, 2013 could take effect would be July 31, 2013.

On June 3, 2013, when the landlord applied for dispute resolution, the landlord had not issued the 1 Month Notice. Under these circumstances, I find that the landlord has not applied for dispute resolution to seek an end to this tenancy for cause (i.e., late payment of rent). Consequently, I am unable to issue an Order of Possession on the basis of the landlord's 1 Month Notice. However, as the landlord has not applied for dispute resolution to seek an end to this tenancy on the basis of the 1 Month Notice, the landlord remains at liberty to apply for dispute resolution with respect to the 1 Month Notice.

Analysis – Monetary Issues

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$1,025.00 in unpaid rent for each of May and June 2013.

The landlord said that he changed the terms of the oral tenancy agreement to add a \$200.00 utility charge to the regular monthly rent. As the landlord cannot change the terms of a tenancy agreement, either written or oral, without evidence that the tenants agreed to these changed terms, I dismiss the landlord's claim for unpaid utilities without leave to reapply.

I allow the landlord to retain the tenants' \$500.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this term. As the landlord has been partially successful in his application, I allow the landlord to recover his \$50.00 filing fee from the tenants.

Conclusion

I dismiss the landlord's application to end this tenancy on the basis of a 10 Day Notice issued on May 20, 2013, without leave to reapply. I find that the landlord is at liberty to apply for an end to this tenancy on the basis of the 1 Month Notice.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and to retain the tenants' security deposit:

Item	Amount
Unpaid May 2013 Rent	\$1,025.00
Unpaid June 2013 Rent	1,025.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,600.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for a monetary award for damage arising out of this tenancy is withdrawn. The landlord is at liberty to reapply for a monetary award for this item should he gain vacant possession of the rental unit and has a proper opportunity to assess any damage that may have arisen during this tenancy.

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: June 27, 2013

Residential Tenancy Branch