



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 2, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to monetary compensation for damages?

Preliminary Matter

The landlord amended the application to add a \$45.00 claim for damages for a broken storm window. Section 7 of the Act permits a party to make a claim for damages and loss when the other party violates the Act or agreement and the applicant has suffered a loss as a result.

Section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and that a tenant must repair damage to the rental unit or

common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. This section goes on to state that a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2)(a) of the Act requires that (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I therefore find that the landlord's claim for damages to the unit is premature.

In addition to the above, I find that the landlord's application was filed to deal with a 10-Day Notice to End Tenancy for Unpaid Rent issued under section 46 of the Act and the landlord was originally seeking an Order of Possession under section 55 of the Act to end the tenancy and seeking a monetary order for rental arrears under sections 26 and 67 of the Act. I find that adding an additional unrelated claim pursuant to section 7 of the Act, to this application is not prejudicial to the respondents.

Rule 2.3 in the Residential Tenancy Rules of Procedure states that, if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find it necessary to dismiss the portion of the landlord's application seeking compensation for the damaged window with leave to reapply.

Background and Evidence

The landlord testified that the tenancy began in May 2013, at which time the tenant paid a security deposit of \$375.00

The landlord testified that the tenant failed to pay \$750.00 rent for July 2013 and the 10-Day Notice to End Tenancy for Unpaid Rent was served by posting it on the tenant's door on the same day.

The landlord testified that the tenant then failed to pay \$750.00 for the month of August for total arrears of \$1,500.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

The landlord is seeking an Order of Possession and a monetary order claiming unpaid rent of \$750.00 for each month for July 2013, and August 2013 and the \$50.00 cost of filing the application. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 2, 2013 with effective date of July 15, 2013.

The tenants testified that, almost immediately after they took occupancy, the landlord began to confront them with accusations of drug use and engaged in conduct that interfered with their quiet enjoyment of the suite.

The tenants did not dispute that the rent for July was not paid on the first day of the month. However, the tenants testified that they attempted to pay it on July 2, 2013, but the landlord declined to accept the rent and instead issued a 10-Day Notice to End Tenancy for Unpaid Rent.

The tenants testified that, after the landlord turned off their stove and repeatedly interfered with their tenancy, they decided to accept the end of the tenancy and not dispute the 10-Day Notice to End Tenancy for Unpaid Rent. The tenant stated that the copies of the text messages they submitted into evidence verify their allegations that they were being harassed by the landlord.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

In regard to the tenant's claims that the landlord violated the Act by turning off utilities and interfering with the tenant's quiet enjoyment of their suite, I find that these factors, even if found to be true, are not a relevant to the issue of unpaid rent and the hearing matters before me, which pertain only to the landlord's application and claims.

Section 26 of the Act states that rent must be paid when it is due, whether or not the landlord is in compliance with the Act. (my emphasis)

I find that the landlord has established a total monetary claim of \$1,550.00 comprised of \$1,500.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim leaving a balance due of \$1,175.00.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$6,000. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted an Order of Possession and Monetary Order for rent.

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: August 29, 2013

Residential Tenancy Branch