



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each 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 following are undisputed facts: The tenancy began on October 1, 2011. A written tenancy agreement provides that rent of \$1,050.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$525.00 as a security deposit from the Tenant. The Tenant owes \$150.00 in rental arrears from July

2013. The Tenants paid rent for August 2013. No rent was paid for September 2013. The tenancy agreement does not include the second named Tenant as a party.

The Landlord states that prior to the Tenant's payment of August 2013 rent, the Tenants were personally served with a 10 day notice for unpaid rent (the "Notice"). The Tenants state that they not receive this Notice until they were served with the Landlord's application on August 17, 2013. The Landlord states that the service of the notice was witnessed by two persons. Neither of these persons attended the hearing as Witnesses or provided an affidavit attesting to the service of the Notice.

The Tenants state that on August 10, 2013 they gave the Landlord verbal notice to end the tenancy for September 15, 2013. The Tenants state that they did not have the Landlord's address to provide written notice. The Landlord agrees that the Tenants were not provided the Landlord's address but that it was provided in the Notice.

The Tenant states that the tenancy first started with a different owner. The Landlord states that the rental unit was purchased in February 2013. The Tenant states that although the written tenancy agreement provides for rent to be paid on the first day of each month, they were paying their rent on the 8th day of each month. The Tenant states a verbal agreement for this payment date was made with the current Landlord as well. The Parties agree that the Landlord came to the unit each month on the 8th to collect the rent.

The Landlord states that the locks to the unit were changed on September 21, 2013. The Landlord claims \$1,050.00 for September 2013 rent and \$150.00 for rental arrears.

It is noted that the second named Tenant displayed disruptive behavior during the hearing resulting in cautions.

Analysis

An oral agreement may not amend a written agreement. Although the Tenant states that an oral agreement was made to pay the rent on the 8th day of each month, based

on the undisputed evidence that the tenancy agreement provides that rent is payable on the first day of each month, I find that the rent is payable on the first day of each month.

Section 45 of the Act provides as follows in relation to a tenant's notice to end a month to month tenancy:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act provides that in order to be effective, a notice to end tenancy must be in writing. Section 53 of the Act provides that if a tenant gives notice to end a tenancy to be effective on a date that does not comply with Section 45, the notice is deemed to be changed to the correct date.

Given the above finding that rent is payable on the first day of each month, and accepting that the undisputed evidence that the Tenant gave verbal notice to end the tenancy to the Landlord in August 2013, I find that the Tenant's notice to end tenancy was effective for the last day of September 2013. I note that although the Tenant gave verbal notice, as the Landlord did not dispute receiving this notice, did not provide any witness evidence that the Notice containing the Landlord's address was served on the Tenant, considering the Tenant's evidence that no such notice was provided, and the Tenant's undisputed evidence that the Landlord did not otherwise provide its address to the Tenant, I find that the Tenant did not have the Landlord's address and that the oral provision of notice in the circumstances is valid.

As the Landlord knew a month in advance that the tenancy would end mid month, given the reasonably expected difficulties associated with finding a new tenant for a mid month occupancy but considering that the Landlord did not provide any evidence of mitigation efforts, I find that the Landlord is only entitled to three weeks rent for

September 2013 in the amount of **\$787.50**. Based on the undisputed evidence that the Tenant owes arrears for July 2013 I find that the Landlord has also substantiated an entitlement to **\$150.00**. As the Landlord's application has met with success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$987.50**.

Setting the security deposit of **\$525.00** plus zero interest off the Landlord's entitlement of **\$987.50** entitlement leaves **\$462.50** owed by the Tenant to the Landlord. As the second named Tenant is not a party to the tenancy agreement, I make the order in relation to only the first named Tenant.

Based on the Landlord's evidence of changing the locks and considering the Tenant's evidence that the Landlord was informed that they would be moving out on September 15, 2013, I find that the Landlord has had possession of the unit since that date. I therefore dismiss the Landlord's claim for an order of possession.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$525.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$462.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 27, 2013

Residential Tenancy Branch

