



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords - OPR, OPC, MND, MNR, MNSD, MNDC, FF
For the tenants – CNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent. The landlords applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; For a Monetary Order for damage to the unit, site or property; For an Order to keep the security and pet deposits; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and one landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order to recover unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the tenants' security and pet deposit?
- Are the tenants entitled to have the 10 Day Notice set aside?

Background and Evidence

The parties agree that this fixed term tenancy started on October 28, 2013 and was due to expire on November 30, 2014. Rent for this unit is \$1,800.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$900.00 on October 15, 2013 and a pet deposit of \$450.00 by November 07, 2013.

The landlord attending testifies that the tenants failed to pay rent for November on the day it was due and a 10 Day Notice to End Tenancy was issued on November 07, 2013. The tenants later paid the outstanding rent. On November 19, 2013 the tenants paid \$900.00 towards rent for December. However, the balance of \$900.00 was not paid and the landlords issued another 10 Day Notice to End Tenancy on December 05, 2013. This Notice was posted to the tenants' door on December 09, 2013 and the landlords have provided proof of posting the Notice to the door in evidence. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on December 18, 2013. The tenants did not pay the outstanding rent and disputed the first Notice issued in November, 2013. Since that time the landlord testifies that the tenants have not paid rent for January, 2014 or the outstanding rent for December, 2013. The total amount of outstanding rent is \$2,700.00.

The landlords served the tenant with another two 10 Day Notice on January 02, 2014 for Decembers and Januarys rent. The landlord served another 10 Day Notice for unpaid utilities on January 08, 2014. The landlord testifies this indicated that the tenants had failed to pay their utility account to the City for \$205.00. However, the landlord testifies that she has not received a bill from the City at this time to inform the landlords that this amount will be applied to the landlords' taxes.

The landlords seek a Monetary Order to recover unpaid rent and utilities and have also applied for an Order of Possession to take effect as soon as possible. The landlord testifies that the tenants have caused damage to the rental unit. However as the tenancy is ending the landlord will wait to conduct the final inspection of the property to determine the damages or cleaning required at the end of the tenancy.

The landlord testifies that there is no further claim for money owed or compensation for damage or loss. The landlord seeks an Order to keep the security and pet deposits to offset against the unpaid rent.

The tenants agree that they owe \$900.00 for December, 2013. The tenant JP testifies that he was attacked in December and the rent money was stolen. The tenant testifies that there is a Police report of this attack and the tenant had to go to the hospital to deal with the injuries sustained and is still off work due to these injuries. The tenants agree that they have failed to pay rent for January, 2013. The tenants' testify that if they are evicted from the rental unit they should not have to pay all the rent owed for January, 2014.

The tenants seek an extension of time to pay the rent owed and seek to have the 10 Day Notice to End Tenancy cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I find that the tenants have failed to pay rent for December, 2013 of \$900.00 and for January, 2014 of \$1,800.00. The landlords are entitled to recover these rent arrears to the sum of **\$2,700.00** and will receive a monetary award for this amount pursuant to s.67 of the *Act*.

With regard to the landlords' claim to recover unpaid utilities; as this utility account with the City is in the tenants' name the landlord has provided no evidence that the account is still in arrears or that any amounts will be applied to the landlords' taxes. Consequently, the landlords' application to recover unpaid utilities is dismissed with leave to reapply in the event the tenants do not settle all utility accounts at the end of the tenancy.

There is no provision under the *Act* for the tenants to either apply for or be awarded additional time to pay the rent. Furthermore with regards to the tenants question raised about only having to pay rent up to the day they move out in January. A landlord is entitled to recover rent for the whole month of January as if the tenants had given written notice to end the tenancy in December the earliest the tenants could have ended the tenancy would have been January 31, 2014.

I find the landlords are entitled to keep the security and pet deposit of **\$1,350.00** in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords' monetary award.

With regards to the landlords' claim for damage to the unit, site or property; I find the tenancy is still in place at this time and therefore the tenants still have the opportunity to repair any damage caused during their tenancy and ensure the unit is left reasonably clean in accordance with s. 32 of the *Act*. Consequently, I dismiss this section of the landlords' claim with leave to reapply.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order for the following amount:

Unpaid rent	\$2,700.00
Filing fee	\$50.00
Less security and pet deposit	(-\$1,350.00)
Total amount due to the landlords	\$1,400.00

I accept that the tenants were served the 10 Day Notices to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notices state that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy

would end. The Notice the landlord has requested I deal with today was deemed to have been received by the tenants on December 12, 2103. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the landlords have established a claim for unpaid rent and an Order of Possession for unpaid rent and I grant the landlords an Order of Possession pursuant to s. 55 of the *Act*.

As an Order of Possession has been issued to the landlord for unpaid rent I am not required to deal with the landlords' application for an Order of Possession for cause.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,400.00**. The Order must be served on the respondents and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This Order must be served on the Respondents and may be filed in the Supreme Court and enforced as an Order of that Court.

The landlords' application for unpaid utilities and for damage to the unit, site or property is dismissed with leave to reapply.

The tenants' application is dismissed without leave to reapply.

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: January 14, 2014

Residential Tenancy Branch

