



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes: OPR, MNR
CNC, FF

Introduction

In response to a direct request application by the landlord for an order of possession and a monetary order as compensation for unpaid rent, an *ex parte* proceeding took place on January 08, 2014. By decision of that same date, an order of possession and a monetary order were issued in favour of the landlord.

The tenant(s) filed an application on December 31, 2013 for cancellation of a notice to end tenancy for cause / and recovery of the filing fee. In response to that application a hearing was scheduled to occur on February 17, 2014.

The tenant(s) also filed an application for review consideration concerning file # 816***. In the result, by Review Consideration Decision dated January 23, 2014, the Arbitrator ordered that the decision and orders dated January 08, 2014 be suspended until such time as a new hearing is conducted "and a decision is reached on both the landlord's and the tenant's applications." The Arbitrator further ordered that both applications be heard together at the hearing scheduled for February 17, 2014. Ultimately, both parties attended the hearing scheduled for February 17, 2014 and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 15, 2013. Monthly rent of \$1,350.00 is due and payable in advance on the 15th day of each month. A security deposit of \$675.00 and a pet damage deposit of \$375.00 were both collected.

Arising from rent of \$1,350.00 which was unpaid when due on November 15, 2013, the landlord claims to have issued a 10 day notice to end tenancy for unpaid rent dated

December 22, 2013. The landlord testified that the notice was served in-person on that same date. A copy of the notice was submitted in evidence.

The landlord also claims to have issued a 1 month notice to end tenancy for cause dated December 22, 2013. The landlord testified that the notice was served in-person on that same date. A copy of the notice was submitted in evidence. Only page 1 of what is a 2 page notice was submitted in evidence. On December 31, 2013 the tenant(s) filed an application to dispute only the 1 month notice.

The landlord claims that the tenant(s) made no payment toward rent due on November 15, 2013. However, the landlord claims that on or about December 15, 2013, the tenant(s) made payment of rent due on that date in the limited amount of \$1,340.00 (\$10.00 less than the full amount due). Subsequently, no rent was paid when due on January 15, 2014, and the tenant(s) abandoned the unit on January 24, 2014, without providing a forwarding address. The landlord testified that the unit was re-rented effective February 15, 2014.

The tenant(s) have vacated the unit. Accordingly, I consider the landlord's application for an order of possession to be withdrawn, and the tenant(s)' application for cancellation of a 1 month notice to end tenancy for cause to be withdrawn.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord issued a 10 day notice to end tenancy for unpaid rent, and a 1 month notice to end tenancy for cause, both dated December 22, 2013, and both served in-person on that same date. I find that the tenant(s) neither paid the outstanding rent within 5 days of receiving the notice, nor applied to dispute the 10 day notice within 5 days of receiving it. Rather, the tenant(s) made only limited payment toward rent which was due on December 15, 2013, and they abandoned the unit without providing a forwarding address on January 24, 2014.

As for compensation, I find that the landlord has established entitlement to compensation of **\$2,710.00** as follows:

\$1,350.00: unpaid rent due November 15, 2013 for the period from November 15 to December 14, 2013

\$10.00: unpaid rent due December 15, 2013 for the period from December 15, 2013 to January 14, 2014

\$1,350.00: *unpaid rent due January 15, 2014 for the period from January 15 to February 14, 2014*

The landlord's original application has not been amended to include application to recover the filing fee.

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I hereby order that the landlord retain the security deposit and pet damage deposit in the combined amount of **\$1,050.00** (\$675.00 + \$375.00), and I hereby issue a **monetary order** in favour of the landlord for the balance owed of **\$1,660.00** (\$2,710.00 - \$1,050.00).

Section 82 of the Act speaks to **Review of director's decision or order**, in part:

82(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Pursuant to all the foregoing, the decision and orders dated January 08, 2014 are hereby set aside.

Conclusion

The landlord's application for an order of possession is withdrawn.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,660.00**. This order may be served on the tenant(s), filed in the Small Claims Court and enforced as an order of that Court.

The tenant(s)' application for cancellation of a notice to end tenancy for cause is withdrawn. The tenant(s)' application for recovery of the filing fee is dismissed.

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: February 17, 2014

Residential Tenancy Branch

