



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on March 9, 2014 the tenant did not attend. The landlord testified that the documents were served on that manner and on that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call during that time was the landlord.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2013 and the tenant still resides in the rental unit but has agreed to move out by March 31, 2014. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month, and there are currently no rental arrears. The tenant paid the landlord all arrears prior to this hearing and has paid the rent up to the end of March, 2014. The landlord did not collect a security deposit or a pet damage deposit from the tenant, and there is no written tenancy agreement.

The landlord testified that the tenant failed to pay rent in the amount of \$400.00 that was due on February 1, 2014 and the landlord served the tenant on February 14, 2014 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided, by posting it to the door of the rental unit. The notice is dated February 14, 2014 and contains an expected date of vacancy of February 24, 2014 and states that the tenant failed to pay rent in the amount of \$400.00 that was due February 1, 2014 and the tenant failed to pay utilities in the amount of \$900.00 following a written demand on December 15, 2013. The tenant paid the \$400.00 rent on March 14, 2014 as well as utilities up to the end of December, 2013 but more utilities remain outstanding. The bill for March, 2014 has not yet been received. No utility bills have been provided for this hearing.

The landlord further testified that the tenant has not served the landlord with an application for dispute resolution, and the landlord has a new tenant to move into the rental unit April 1, 2014 and requests an Order of Possession.

The landlord also testified that the tenant or persons permitted on the property by the tenant have broken a window in the rental unit, and there is also a hole in a wall, but the landlord was at the rental unit March 25, 2014 and stated that the tenant has purchased drywall to repair the wall. No move-in condition inspection report was completed.

Analysis

The *Residential Tenancy Act* states that if a tenant who is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities does not pay the rent in full or dispute the notice within 5 days of service, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant receives the notice. In this case, the landlord testified that the notice was served by posting it to the door of the rental unit on February 14, 2014. The *Act* states that documents served in that manner are deemed to be served 3 days later, and I find that the tenant was deemed served on February 17, 2014. The *Act* also states that incorrect effective dates contained in a notice to end tenancy are changed to the nearest date that complies with the *Act*, which I find is February 27, 2014. The tenant has not moved out, did not pay the rent or dispute the notice within 5 days, and therefore, I find that the landlord is entitled to an Order of Possession.

With respect to the monetary order for unpaid rent or utilities, the landlord testified that the tenant has paid rent to the end of March, 2014, and therefore, no rent is due or payable at this time. With respect to unpaid utilities, the landlord does not have the final bills yet from the utility company, and therefore, I find the application is premature.

Similarly, the landlord's application for a monetary order for damages is premature. The landlord is required under the *Act* to schedule a move-out condition inspection and provide the tenant with notice of it in writing. If the tenant is not available at the date and time scheduled, the landlord must provide the tenant with a second opportunity, using the form on the Residential Tenancy Branch Website entitled "Notice of Final Opportunity to Schedule a Condition Inspection." If the tenant does not attend the inspection, the landlord must complete it in the tenant's absence.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The landlord must provide the tenant with an opportunity to repair damages up until the end of the tenancy.

In summary, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application. The balance of the landlord's application is dismissed with leave to reapply.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

The balance of the landlord's application is hereby dismissed with 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: March 26, 2014

Residential Tenancy Branch

