



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, ET, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application filed by the landlord, and an amended application filed by the landlord. The amended application seeks an Order of Possession for unpaid rent or utilities; for an order ending the tenancy earlier than a notice to end tenancy would take effect; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant both attended and gave affirmed testimony. The landlord was also assisted when required by an interpreter. The landlord also provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the tenancy should end earlier than a notice to end tenancy would take effect?
- Is the landlord entitled under the 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security

deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord also testified that the tenant failed to pay rent in full for the month of January, 2014. On January 8, 2014 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of page 1 of the 2-page form has been provided, and the landlord testified that 2 pages were in fact served. The notice is dated January 8, 2014 and contains an expected date of vacancy of the same date. The notice also states that the tenant failed to pay rent in the amount of \$3,000.00 that was due on January 1, 2014 and that the tenant failed to pay utilities in the amount of \$500.00 following written demand on January 1, 2014. The landlord testified that as of January 8, 2014, the tenant owed rent for December, 2013 and January, 2014. The tenant has since paid the December rent in installments, and still owes \$100.00 for January. On January 24, 2014 the landlord issued a receipt to the tenant for \$1,400.00 for "temporary occupancy." The tenant has not paid the outstanding rent for January and has not paid any rent for February or March, 2014. Copies of receipts for rent and the security deposit have been provided.

Also provided is a Proof of Service document dated January 8, 2014 which states that the notice to end tenancy was posted to the tenant's door on January 8, 2014 at 6:00 p.m. and is witnessed by a neighbour.

The landlord further testified that since serving the notice to end tenancy, the tenant has not served the landlord with an application for dispute resolution disputing the notice.

The landlord also testified that the utilities amounted to \$517.00 which was an accumulation from May to October, 2013, and the parties made a deal whereby the tenant would put the utilities in his name and the landlord would cancel the outstanding utility arrears; the landlord does not claim utilities as against the tenant.

The tenant testified that he moved in at the end of May or first of June, 2013, about a month after the landlord's recollection. Also, the tenant received the notice to end personally from the landlord after January 8, 2014 and that the notice was not posted to the door of the rental unit.

The tenant was injured at work in August and got 2 months behind waiting for a WCB claim. The response was denied, but the tenant obtained some EI relief.

The landlord was to complete repairs in the rental unit, but told the tenant that if the tenant paid the rent, the landlord would complete the repairs. The stove needs replacing or repairing, the roof leaks, and other repairs are required. On March 19,

2014 the landlord told the tenant that if the tenant did the work, the landlord would repay him by not charging rent for February and March, 2014, but no such agreement was made in writing.

The tenant also testified that he told the landlord that he was not paying rent if repairs were not completed.

The landlord stated in rebuttal that on March 19, 2014 the landlord told the tenant that if he completed repairs February's rent would be forgiven, but no repairs have been made.

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 receiving it, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, I find that the tenant has not disputed the notice. The landlord testified that no application for dispute resolution has been served on the landlord and the tenant has not disputed that testimony.

The tenant also agrees that no rent has been paid for February or March, 2014 and that he does not feel obligated to pay rent if the landlord does not make the repairs. He also testified that the parties had an agreement that rent didn't need to be paid for those months if the tenant completed the repairs himself. There is no evidence of that, but the landlord did testify that the tenant was offered no rent for February if the tenant made the repairs, however no repairs were made. The *Act* requires a landlord to make repairs that are needed in a rental unit, but also specifies that a tenant cannot withhold rent if the landlord fails to comply.

The landlord has only provided 1 page of the 2-page notice to end tenancy but testified that both pages were served on the tenant, and the tenant did not dispute that testimony, therefore I find that both pages were served.

Further, the notice to end tenancy contains an expected date of vacancy that is the same date that it was issued, January 8, 2014. The landlord must provide the tenant with at least 10 days notice, and if it was served by posting it to the door of the rental unit, it is not considered served until 3 days later. The parties disagree as to the date and method of service, but I prefer the evidence of the Proof of Service document which states it was posted to the door of the rental unit on January 8, 2014 because it is witnessed by a neighbour. Therefore, I find that the notice was served on January 8,

2014 in that manner, and the tenant was deemed served 3 days later, or January 11, 2014. The tenant did not dispute the notice by January 16, 2014 and therefore I must find that the tenant is conclusively presumed to have accepted the end of the tenancy.

As for the effective date, the *Act* 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 January 21, 2014. That date has passed, and therefore, I grant the landlord an Order of Possession effective on 2 days notice to the tenant. I am not satisfied that the landlord has established that the tenancy should end earlier than a notice to end tenancy would take effect, and I dismiss that portion of the landlord's application.

With respect to the monetary order, the landlord has provided receipts and I am satisfied that the tenant owes rent for January, 2014 in the amount of \$100.00 as well as \$1,500.00 for February, 2014 and \$1,500.00 for March, 2014. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the landlord's application for an order ending the tenancy earlier than a notice to end tenancy would take effect is hereby dismissed.

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 pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,150.00.

These orders are final and binding and may be enforced.

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 25, 2014

Residential Tenancy Branch

