



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C. Q. Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD

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 for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

An agent for the landlord company attended the conference call hearing and gave affirmed testimony, however, neither of the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to taking any testimony, but no one attended for the tenants. The landlord has provided evidence of having served each of the 2 tenants by registered mail on February 7, 2014, and I am satisfied that each of the tenants has been served in accordance with the *Residential Tenancy Act*.

The landlord has provided evidentiary material to the Residential Tenancy Branch and to the tenants, and all testimony and evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- 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 tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late fees?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 15, 2013 and the tenants still reside in the rental unit. One of the tenants resided there prior to that date, but upon the second tenant moving in, the new tenancy agreement was prepared to include both tenants. Rent in the amount of \$680.00 per month is payable in advance on the 1st day of each month, and the landlord collected a pro-rated amount for the first month. The landlord also collected a security deposit from the tenants in the amount of \$340.00 which was paid by installments during December, 2012 and January, 2013. The security deposit is still held in trust by the landlord.

The tenants failed to pay rent when it was due in December, 2013. The landlord served the tenants with a notice to end tenancy but was not successful in obtaining an Order of Possession by way of the Direct Request Process. A copy of that notice to end tenancy has been provided and it shows that at the time of its issuance the tenants were in arrears \$480.00.

The tenants again failed to pay rent when it was due in January, 2014 and the landlord's agent served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 10, 2014 by personally handing it to one of the tenants. A copy of both pages of that notice has also been provided. It is dated January 10, 2014 and contains an expected date of vacancy of January 22, 2014. The notice states that the tenants have failed to pay rent in the amount of \$680.00 that was due January 1, 2014 and that the tenants failed to pay utilities in the amount of \$480.00 following a written demand on December 2, 2013. The landlord's agent testified that the \$480.00 is actually the rental arrears for December 2, 2013. The tenants have paid \$35.00 towards those arrears on January 3, 2014.

The tenants have not paid any rent since the issuance of the notice to end tenancy, and the landlord claims an Order of Possession and a monetary order for the balance of rent due in December, 2013 as well as for January, February and March, 2014.

The landlord's agent also testified that the tenancy agreement, a copy of which has been provided, contains an Addendum wherein the parties agreed that late payments of rent are subject to a \$25.00 late fee, and the landlord claims that fee for the 4 months.

The landlord's agent further testified that during the tenancy, one of the tenants called to advise the landlord that the other tenant had caused some damage and the police had been called. Windows were broken, and the tenant who had called the landlord's agent verbally agreed to pay for the damages. The windows cost \$175.39 and a service person who was called out charged \$45.00 to assist the tenant with cleaning up the debris and installing the windows. The landlord has made a claim for restitution from the Courts and gave the receipts to the police as evidence without keeping copies, but the landlord has not heard anything back from the police, nor is the landlord's agent aware of the Court date, if any. Therefore, the landlord claims \$220.39 as against the tenants. Further, the landlord's agent testified that a move-in condition inspection report was completed at the commencement of the tenancy, but the landlord's agents have not been permitted by the tenants to inspect the rental unit, and since the tenants are still resident at the unit, a move-out condition inspection report has not yet been completed and the landlord is unaware of what other damages, if any may exist.

Analysis

Firstly, with respect to the notice to end tenancy, the *Residential Tenancy Act* requires that a tenant who is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to dispute it within 5 days or pay the rent in full within that period. If the tenant does neither, 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 service. In this case, I accept the testimony of the landlord's agent that one of the tenants was personally served with the notice on January 10, 2014. The tenants have not yet paid any rent and have not disputed the notice, and therefore I find that the tenants are conclusively presumed to have accepted that the tenancy has ended, but have not moved out of the rental unit. Therefore, I find that the landlord is entitled to an Order of Possession.

With respect to the outstanding rent, I accept the undisputed testimony of the landlord's agent that the tenants owed \$480.00 for December, 2013 rent and paid \$35.00 on January 3, 2014, leaving a balance outstanding of \$445.00. I further accept that the tenants have paid no rent since the issuance of the notice to end tenancy and are now in arrears for the months of January, February and March, 2014, totalling \$2,040.00. Therefore, I find that the landlord has established a monetary claim for unpaid rent in the amount of \$2,485.00.

The landlord has also provided a copy of the Addendum to the tenancy agreement which specifies that late payments of rent are subject to a \$25.00 late payment fee. The regulations to the *Residential Tenancy Act* permit such a fee if that has been agreed to

in the tenancy agreement, which I find it has, and I grant the landlord a monetary order in the amount of \$100.00, being \$25.00 for each of December, 2013, and January, February and March, 2014.

With respect to the landlord's claim for damages to the window, I am not satisfied that the landlord's claim has not already been dealt with or will be dealt with by the Provincial Court by way of a restitution order. Further, I find that, since the move-out condition inspection report has not yet been completed, it is premature to make such a claim under the *Residential Tenancy Act*, and I dismiss that portion of the landlord's claim with leave to reapply.

In summary, I find that the landlord is entitled to an Order of Possession and has established a monetary claim for \$2,485.00 in unpaid rent and \$100.00 for late fees. I order the landlord to keep the \$340.00 security deposit in partial satisfaction of the claim, and I grant a monetary order for the difference, in the amount of \$2,145.00. The landlord's application for a monetary order for damages is hereby 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 tenants.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,145.00.

These orders are final and binding on the parties 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 03, 2014

Residential Tenancy Branch

