



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Karimi Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, FF
CNR, RP

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities and for breach of an agreement; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order that the landlord make repairs to the unit, site or property.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other. 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

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?
- Should the notice to end tenancy for unpaid rent or utilities be cancelled?
- 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unpaid rent?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the landlord's claim?
- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$640.00 per month was payable until a rental increase took effect on July 1, 2014 bringing the monthly rental amount to \$654.00. Rent is payable in advance on the 1st day of each month and a copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$320.00 which is still held in trust by the landlord. The landlord's agent has been a manager of the rental complex since February, 2014.

The landlord's agent also testified that each of the 28 units within the rental complex were re-keyed in March, 2014 and after the key exchange took place the tenant introduced the landlord's agent to the tenant's brother. The landlord's agent told the tenant that if the tenant intended for her brother to reside in the rental unit he needed to be approved by the landlord and sign a tenancy agreement. The tenant's brother did not do so.

The landlord's agent further testified that a Breach Letter was provided to the tenant on May 1, 2014, a copy of which has been provided. The letter sets out paragraph 13 of the tenancy agreement which states that only the persons listed in clauses 1 or 2 of the agreement may occupy the rental unit, and any others must be authorized by the landlord. It also states that failure to comply with the paragraph of the tenancy agreement will result in a notice to end the tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on May 31, 2014 and a copy has been provided. The notice is dated May 31, 2014 and contains an expected date of vacancy of June 30, 2014. The reason for issuing the notice is:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant did not pay rent on June 1, 2014 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 2, 2014 by posting it to the door of the rental unit. A copy has been provided and it is dated June 2, 2014 and contains an effective date of vacancy of June 15, 2014 for unpaid rent in the amount of \$640.00 that was due on June 1, 2014.

The landlord's agent also testified that the parties had a conversation on June 3, 2014 wherein the tenant advised that she would pay the rent later that day and wanted to discuss the additional occupant. The tenant told the landlord that the tenant's brother could not have been approved as a tenant because he had no identification, but now does. The landlord's agent testified that the tenant had plenty of notice after the Breach Letter was issued to correct the breach. The landlord's agent agreed to meet with the tenant on June 3, 2014, but the tenant did not show up.

The landlord's agent also testified that the tenant gave the landlord a notice to end the tenancy on May 2, 2014 effective June 30, 2014 but hasn't moved out.

The tenant has not paid any rent since the issuance of the notices to end the tenancy and now owes \$640.00 for June and \$654.00 for July, 2014. A copy of the notice of rent increase has also been provided. The landlord claims an Order of Possession and a monetary order for \$1,344.00 including recovery of the \$50.00 filing fee for the cost of the landlord's application, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

The tenant testified that the tenant's brother has been residing in the rental unit with the tenant since June, 2013 and the landlord's manager at the time knew it and was okay with it. The new manager took over in February, 2014 and in March, 2014 requested that the tenant's brother be approved as a tenant and that he sign a tenancy agreement, but the process required identification of the tenant's brother and he had none. The tenant's brother now has identification and could now be on the tenancy agreement.

The tenant further testified that the landlord's agent told the tenant that if rent was paid for June, 2014, the landlord's agent could not guarantee that the tenant could stay because the 1 Month Notice to End Tenancy had been issued.

The tenant further testified that the towel rack in the bathroom is broken and the toilet leaks, the seat is broken and water rises to the top of the bowl. Also the hot water runs consistently in the bathtub, and the bathroom is in general need of repair.

The tenant requests that both notices to end the tenancy issued by the landlord be cancelled and that the landlord make repairs to the bathroom.

Analysis

The *Residential Tenancy Act* states that where a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant must dispute it within 10 days or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date. In this case, I find that the tenant did not include an application to dispute the 1 Month Notice to End Tenancy for Cause,

however, I am satisfied that the tenant intended to dispute both notices issued by the landlord. The tenant's application was filed on June 3, 2014.

Where a tenant disputes a notice to end tenancy the onus is on the landlord to prove the notice which may include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. With respect to the reason for issuing it, I have also reviewed the Breach Letter provided by the landlord. I accept the testimony of the landlord's agent that the Breach Letter was given to the tenant on May 1, 2014. The landlord served the tenant with the notice to end tenancy on May 31, 2014 and testified that the tenant made arrangements to meet with the landlord's agent on June 3, 2014 but the tenant didn't show up. By then the notice to end tenancy had already been served.

The tenant testified that the additional occupant has been in the rental unit for a year and the previous manager, having only been replaced by this manager in February, 2014, knew of the additional occupant and was okay with it. I find that no previous managers have taken any steps to enforce that paragraph of the tenancy agreement, and therefore, I find that the landlord did not have sudden cause to end the tenancy.

The *Act* also states that a tenant must pay rent when it is due under the tenancy agreement. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and find that it is in the approved form, both pages of the 2-page form have been provided and it contains information required by the *Act*. I further find that the tenant did not pay the rent. The tenant testified that the rent wasn't paid because the landlord could not guarantee that the tenant could stay because the 1 Month Notice to End Tenancy for Cause had already been issued. However, the 1 Month Notice to End Tenancy for Cause contains an expected date of vacancy of June 30, 2014 and the tenant would obviously have had to pay rent for that month. Therefore, I cannot find that the tenant has a legal defence to the failure to pay rent and the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby dismissed. I further find that the landlord is entitled to an Order of Possession.

I have also reviewed the notice of rental increase, and I am satisfied that the tenant owes the landlord rent for the month of June in the amount of \$640.00 and for July, 2014 in the amount of \$654.00.

Since the tenancy is ending, I decline to order that the landlord make repairs to the bathroom of the rental unit, and that portion of the tenant's application is hereby dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$320.00 security deposit in partial satisfaction of the landlord's claim and I grant the landlord a monetary order for the difference in the total amount of \$1,024.00.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the notice to end tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for an Order of Possession for breach of an agreement is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord for unpaid rent on 2 days notice to the tenant.

I further order the landlord to keep the \$320.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,024.00.

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: July 25, 2014

Residential Tenancy Branch

