



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, OPR, MNR, MNDC, MNSD, FF
CNR, OLC, MNDC

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenants. The landlord has applied for an early end of tenancy, for an Order of Possession for unpaid rent or utilities; 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 tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Preliminary Matters:

1. The landlord attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite making an application for dispute resolution and despite being served with the landlord's application, no one for the tenants attended. 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 was the landlord.

The tenants did not attend and I hereby dismiss the tenants' application without leave to reapply.

2. The landlord testified that the tenants did not serve the landlord with the Tenant's Application for Dispute Resolution and learned about it when filing the landlord's

application. The disputes were joined to be heard at the same time. On June 19, 2014 the Residential Tenancy Branch provided to the landlord a notice of hearing to serve on the tenants with the Landlord's Application for Dispute Resolution. The tenants were served on June 24, 2014. The *Residential Tenancy Act* states that a party who makes a claim must serve the other party within 3 days of making it. In this case, it is clear that the documents were not served until 5 days after being provided with a notice of hearing to serve with the hearing package. The landlord testified that he was ill and had to seek medical attention immediately after receiving the hearing package, and contacted his child who resides in the rental complex and sometimes acted as property manager for the landlord. The landlord's child had a migraine and was not able to deal with service immediately.

In considering whether or not to grant an extension of the time limit, I refer to Residential Tenancy Branch Policy Guideline #36, "Extending a Time Period," which states:

1. *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances***.

I am satisfied that the tenants received the landlord's application and the notice of hearing 9 days prior to the hearing date and those documents contained the same appearance information that the tenants themselves received from the Residential Tenancy Branch for their own application. The tenants already knew of the date, time, phone number and passcodes for the hearing, and failed to serve the landlord or attend the hearing. I find that by virtue of their own application, exceptional circumstances exist and I hereby extend the time period for service of the application to June 24, 2014.

All testimony and evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the tenancy should end earlier than a notice to end tenancy would take effect and the landlord should be granted an Order of Possession of the rental unit?
- 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 tenants for unpaid rent or utilities?
- 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2014. Rent in the amount of \$900.00 per month is payable in advance on the 1st day of each month. A copy of the tenancy agreement has been provided and the landlord testified that he meant to put in the agreement that the landlord would pay the first \$60.00 per month of utilities, but put rent instead, and complied with that. Therefore, rent was collected at \$840.00 per month. The landlord also collected a security deposit from the tenants in the amount of \$450.00 which was paid in 2 installments near the beginning of the tenancy. The full amount is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenants were behind in paying utilities and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 22, 2014. The landlord subsequently learned that because the landlord hadn't made a written demand for payment at least 30 days prior to issuing the notice, it did not comply with the *Act*.

The tenants failed to pay rent when it was due for June, 2014, and the landlord's property manager served to the tenants another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 2, 2014 by personally handing it to one of the tenants. The notice is dated June 2, 2014 and contains an expected date of vacancy of June 12, 2014. The notice states that the tenants failed to pay rent in the amount of \$840.00 that was due on June 1, 2014 and both pages of the 2-page form have been provided. Also provided is a proof of service document signed by a tenant and by the property manager.

The landlord testified that the tenants are now in arrears for June and July rent, and no rent has been received from the tenants since the issuance of the notice to end tenancy.

The landlord requests an Order of Possession and a monetary order for June and July, 2014 rent and stated that in his experience, it will take about 3 months to re-rent the rental unit.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I find that the tenants disputed the notice but did not attend the hearing to provide any evidence or testimony of why the notice should be cancelled. Therefore, find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

With respect to the landlord's claim for a monetary order for unpaid rent, in the absence of any evidence to the contrary, I accept the landlord's testimony that the tenants were in arrears \$840.00 at the time the notice to end tenancy was served and have paid no rent since that time. The tenants did not move out of the rental unit by the effective date of the notice, being June 12, 2014, and if the tenants had given the landlord notice, the notice would not take effect until the end of July. Therefore, I find that the landlord is entitled to a monetary order for June and July, 2014.

The landlord did not lead any evidence related to ending the tenancy earlier than a notice to end tenancy would take effect, and I dismiss that portion of the landlord's application.

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.

I order the landlord to keep the \$450.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$1,280.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an order ending the tenancy earlier than a notice to end tenancy would take effect is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit and I 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 \$1,280.00.

This order is 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 03, 2014

Residential Tenancy Branch

