



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an order of possession and 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; 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.

One of the landlords and the tenant attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witness 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?
- 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?

- Should the landlord be permitted 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 testified that this tenancy began about 2 years ago and the tenant still resides in the rental unit. No written tenancy agreement was signed by the parties, however rent in the amount of \$1,000.00 per month was originally payable on the 1st day of each month. The landlords collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlords. The landlord reduced the rent to \$800.00 per month because the tenant agreed to take over the hydro bills, and the tenant is currently in arrears of rent the sum of \$2,400.00 for August, September and October, 2014. The landlord sent to the tenant a letter dated May 29, 2014, a copy of which has been provided, stating that rent would be reduced to \$800.00 per month on August 1, 2014 and hydro will be taken out of the landlord's name and placed in the tenant's name starting August 1, 2014.

The landlord further testified that on August 1, 2014 the tenant was served with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided, by serving a copy to the tenant's uncle who resides elsewhere. The landlord's agent who generally collects rent was told to go to the uncle's home to get the rent, but he refused to give it to her. The agent returned to the rental unit and wasn't permitted in, so the agent returned to the uncle's residence and served the tenant's uncle with the notice to end tenancy and posted a copy to the door of the rental unit that day. The landlord testified that the tenant's uncle deals with the tenant's affairs, and the landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

The landlord also testified that he was at the rental unit in January or March, 2014 and witnessed damage to the hardwood and bannister and a lot of mess in the rental unit. The landlord has provided photographs, but has not provided any evidence of the costs associated with repairs, and did not complete a move-in condition inspection report with the tenant at the commencement of the tenancy. The landlord stated that he does not believe he will be able to collect on the monetary claims, but seeks an order of possession because he can't afford it. The landlord has provided copies of text messages between the parties, however none are dated.

The tenant testified that she did not agree to having the utility transferred from the landlord's name to the tenant's name; the landlord was trying to change the agreement by having the tenant put hydro in her name, but she can't afford it and told the landlord

that. When the landlord's agent went to collect rent on August 1, 2014, the tenant's uncle provided \$950.00, which was the full amount of rent with a discounted amount for internet that the parties had discussed, but the landlord's agent wouldn't accept any of it. The tenant did not transfer the hydro into her name.

The tenant further testified that her rent is paid by the Ministry of Social Services and the landlord told them that the tenant had moved out so they stopped paying the rent.

The tenant's witness testified that he is the uncle of the tenant and had been friends with the landlord for a long time. The witness told the landlord about his niece, and the parties had a discussion wherein the witness agreed to be the tenant's agent.

The witness also testified that a written tenancy agreement was prepared; the tenant needed it for the Ministry and the landlord said that he needed it for taxes and insurance purposes. He testified that he was reading from the agreement, and that it was signed on August 7, 2012 for a tenancy commencing on August 7, 2014 for fixed term, for rent in the amount of \$1,000.00 per month payable on the 1st of each month, and states that included in the rent is water, electricity, heat, stove, oven, refrigerator, dishwasher, laundry and parking.

The witness also testified that when the landlord's agent went to the witness' home to collect rent, the agent refused to accept the full rent or provide a receipt for the full rent.

In rebuttal, the landlord testified that if partial rent had been accepted, it would mean that the landlord agreed to keeping the hydro in his name and accepting \$1,000.00 per month. It's his house and he can change the terms of the rental if he wants.

Analysis

The *Residential Tenancy Act* requires a landlord to prepare a tenancy agreement, and states that the agreement must contain standard terms. Those terms include the amount of rent payable. In this case, the landlord testified that there is no such written agreement, and the tenant's witness testified that there is and read the terms of that agreement during the hearing, but a copy has not been provided. However, the parties do agree that at the outset of the tenancy rent in the amount of \$1,000.00 per month was payable on the 1st day of each month. I therefore find that an agreement exists in those terms. A party may not change the standard terms without the written consent of the other party.

In this case, the landlord sent to the tenant a letter dated May 29, 2014 stating that rent would be reduced to \$800.00 per month on August 1, 2014 and hydro will be taken out

of the landlord's name and placed in the tenant's name starting August 1, 2014. The tenant did not agree with that, and the landlord has not provided any evidence that the tenant did agree in writing or otherwise. Hydro was obviously included in the rent at the commencement of the tenancy, as evidenced by the landlord's letter dated May 29, 2014, and the landlord cannot change that without the tenant's written consent. Therefore, I find that rent in the amount of \$1,000.00 per month is payable and electricity is included.

The *Act* also states that a landlord may issue a notice to end the tenancy on any day after the date rent is payable under the tenancy agreement and must use the approved form. The landlord issued a notice to end tenancy on August 1, 2014, but issued the notice to end tenancy the day rent is payable, which is also contrary to the *Act*. The landlord's agent served the tenant by handing it to the tenant's uncle, who does not live with the tenant. That is not an acceptable method of serving, unless the person who received the notice apparently resides with the tenant. The parties agree that the tenant and the tenant's uncle do not reside in the same residence. The *Act* also permits posting a copy to the door of the rental unit, in which case it is deemed to have been served 3 days later, but there is no evidence before me that it was served in that manner or when. The landlord testified that it was, but the landlord's agent did not testify at all. A letter has been provided by the agent stating only that the tenant "... was given a ten day notice to vacate the home on August 1, 2014."

With respect to the landlords' claim for a monetary order for unpaid rent, the *Act* also requires a party who makes a claim against another party to do what is reasonable to mitigate any loss or damage resulting from the tenancy. In this case, the tenant testified that the landlords advised the Ministry that the tenant had moved out, when she had not, and the landlord did not dispute that testimony. Another letter has been provided, but it is not signed, nor has the writer identified himself or herself and I decline to consider it. Further, the landlord's agent refused to accept the payment of rent. Therefore, I must find that the landlords have failed to mitigate any loss. The landlord is at liberty mitigate the loss, and if rent remains unpaid, the landlord may serve the tenant with another notice to end the tenancy, but must be prepared to prove the amount owing and what the landlords did to mitigate any loss of revenue.

With respect to the landlord's claim for damage to the unit, site or property, a tenant is required to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. The tenancy has not yet ended, and I find the landlord's application to be premature, and I dismiss it with leave to reapply once the tenancy has ended.

The landlord made no other monetary claims, and the landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

Since the landlords have not been successful in obtaining a monetary order, the landlords' application to keep the security deposit is dismissed; and the landlord is not entitled to recovery of the filing fee for the cost of the application.

Conclusion

For the reasons set out above, the landlords' application for an order of possession is hereby dismissed.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed with leave to reapply.

The landlords' application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The landlords' application to keep the security deposit in full or partial satisfaction of the claim is hereby dismissed.

I order the landlords to comply with the tenancy agreement.

I further order the landlords to comply with the *Residential Tenancy Act* by not changing the terms of the tenancy agreement without the written consent of the tenant, or as otherwise provided by the *Act* or the regulations.

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: October 20, 2014

Residential Tenancy Branch

