



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and breach of an agreement; a Monetary Order for damage to the unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

It should be noted that both parties had to be cautioned about appropriate conduct at the hearing and instructions not to interrupt or make antagonistic sounds such as laughing at submissions of the other party. Both parties also attempted to introduce issues that were not relevant to the issues identified in the landlord's Application for Dispute Resolution which I did not permit. Both parties were encouraged to contact an Information Officer with the Residential Tenancy Branch to determine their respective rights and obligations under the Act.

I confirmed with the parties that the tenant continues to occupy the rental unit. Further, the landlord had not provided evidence to support her monetary claims for damage to the property. Thus, I found the landlord's claims for compensation for damage to the unit to be pre-mature and I dismissed that portion of her claim with leave to reapply.

Although the landlord requested an Order of Possession based upon breach of an agreement, the landlord did not present a copy of a tenancy agreement or a copy of a mutual agreement to end tenancy; thus, I found no basis to consider granting an Order of Possession based upon this reason. Rather, the only evidence before me would support granting an Order of Possession was a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and I have considered whether the tenancy should be ended based upon that Notice.

Issue(s) to be Decided

1. Is the landlord entitled to an Oder of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord had submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated September 8, 2014 in support of the remedies she was seeking. The 10 Day Notice provided to me by the landlord indicates rent of \$500.00 was outstanding as of August 1, 2014. The landlord submitted that the 10 Day Notice contained an error in that the amount should have indicated rent of \$1,000.00 was outstanding. The tenant acknowledged receiving a 10 Day Notice but could not confirm its content as she claimed all of her legal documents had been taken from her rental unit. The tenant recalled that the 10 Day Notice she was served was “all wrong” with respect to the amount of rent owed and the dates.

The parties provided mostly disputed verbal testimony with respect to this tenancy and their dispute which I have summarized below.

The landlord provided varying testimony with respect to the date the tenancy commenced. The landlord initially testified the tenancy commenced September 1, 2014; then the landlord changed her testimony to say it started in August 2014; then she stated it started on September 8, 2014; and, then she returned to her position that it started on September 1, 2014. The tenant testified that her tenancy commenced September 3, 2014.

The landlord testified the monthly rent is \$1,000.00 due on the 1st of the month. The tenant testified that for September 2014 the agreement was for the tenant to pay \$500.00 in rent and do work to repair the rental unit including: the fireplace bricks, sand the floors, paint the rental unit, and perform yard work. Then starting October 1, 2014 her rent would be \$1,000.00. The landlord was of the position the tenant has damaged the rental unit by her actions. The tenant claimed that the preparation work she performed was part of their agreement but the tenant acknowledged that the landlord has since instructed her to stop.

The landlord testified that a security deposit of \$500.00 was collected from the tenant's mother and she issued a receipt. The tenant's mother confirmed that she paid the landlord \$500.00 and that she received a receipt from the landlord but that the receipt

indicated the payment was for rent. The tenant's mother testified that she prepared the receipt and the landlord signed it. The tenant claimed this receipt was also stolen from her rental unit. The tenant also submitted that there was no discussion between the parties concerning payment of a security deposit when the tenancy formed.

I noted that I did not have a copy of a tenancy agreement before me. The tenant testified that there was one in existence but that it was stolen from her rental unit. The landlord initially testified that there is a tenancy agreement; then, she changed her testimony to say she did not prepare one as she took the tenant as her word that she would be a good tenant; and then the landlord testified that she presented the tenant with a tenancy agreement but the tenant took the agreement in order to review it and did not return it.

The tenant stated she presented Shelter Information documents to the landlord to sign for the Ministry of Income Assistance but that the landlord would not sign them. The tenant also stated that the landlord contacted the Ministry to inform the Ministry that the tenant no longer resides at the rental unit which resulted in the tenant not obtaining the shelter portion of her income assistance payment. The landlord acknowledged that she contacted the Ministry to inform the Ministry that the tenant had not paid rent in hopes the Ministry would forward payment directly to her.

.Analysis

Where a landlord applies for an Order of Possession, the landlord must present a copy of a valid Notice to End Tenancy and be prepared to prove that it was served upon the tenant.

A Notice to End Tenancy may be amended by an Arbitrator to correct an obvious error or omission, upon request, where the other party knew what the incorrect or omitted information should have read and the other party would not be prejudiced by an amendment.

Considering the landlord's frequently changing testimony, the tenant's testimony, and in the absence of a copy of the tenancy agreement, I accept on the balance of probabilities that the tenancy commenced in September 2014. As such, I find there was no rent owed to the landlord for August 2014.

When a landlord serves a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent I can think of no more important information than to put the tenant on notice as to the amount of rent that is outstanding and the date that it was due so that the tenant my

take the appropriate action in response. I find the 10 Day Notice the landlord presented to me included not only contained an error as to the date the rent was due; but, according to the landlord the amount was significantly incorrect. Therefore, I find the errors on the Notice are so significant that they cannot be remedied by way of an amendment.

In light of the above, I find the 10 Day Notice presented to me to be invalid and I do not provide the landlord with an Order of Possession based upon that Notice.

Having heard undisputed testimony that the landlord has not received payment of any monies from or on behalf of the tenant since the \$500.00 paid by the tenant's mother, I dismiss the landlord's monetary claim with leave to reapply. As such, the landlord remains at liberty to issue another 10 Day Notice so as to provide correct information on the Notice. Upon receipt of a 10 Day Notice the tenant's options would be to pay the outstanding rent to nullify the Notice; file an Application for Dispute Resolution to dispute the Notice; or accept the tenancy will end on the effective date of the Notice. The Act provides a tenant five days to pay the outstanding rent or file to dispute the Notice.

Conclusion

The landlord's request for an Order of Possession was denied as the landlord failed to demonstrate that a valid and enforceable Notice to End Tenancy as served upon the tenant. The landlord's monetary claims were dismissed with leave.

The landlord remains at liberty to serve the tenant with another 10 Day Notice so as to provide correct information with respect to unpaid rent.

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: November 19, 2014

Residential Tenancy Branch

