



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR
OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlords 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.

The named landlord attended the hearing and represented the landlord company. Another person joined the call identifying himself as the owner but did not testify or take part in the proceedings. The tenant also attended, and the tenant and the landlord both gave affirmed testimony. The landlord has provided evidentiary material in advance of the hearing, however no evidence has been received by the tenant. The tenant advised that she sent evidence to the landlord and to the Residential Tenancy Branch on October 31, 2014 but none has been received by me prior to the hearing, and the landlord denies receiving any.

The Rules of Procedure require that parties exchange and provide evidentiary material at least 5 days before the hearing. The tenant has not done so and therefore I decline to consider any.

All evidence of the landlord and the testimony of the parties is considered in this Decision

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the notice to end tenancy be cancelled?

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2014 and expires after one year. Rent in the amount of \$1,500.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlords.

The landlord further testified that the tenant failed to pay rent in full for the month of August, 2014 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on August 11, 2014. The landlord applied for an Order of Possession and a monetary order by way of the Direct Request process, but the tenant disputed the notice and denied receiving it.

The tenant further failed to pay rent for September, 2014 and the landlord issued another notice to end the tenancy on September 5, 2014. A copy of the notice has been provided and it is dated September 5, 2014 and contains an expected date of vacancy of September 15, 2014 for unpaid rent in the amount of \$3,000.00 that was due on September 1, 2014. Both pages of the 2-page notice have been provided.

The landlord further testified that the tenant has only paid rent on July 2, 2014 and no rent has been received for August, September, October or November, 2014, and the landlord is currently owed \$6,000.00. The landlord believes that the tenant is not currently residing in the rental unit but has sub-let it to other tenants without the landlord's prior knowledge.

The landlord requests an Order of Possession and a monetary order, and an order permitting the landlords to keep the security deposit in partial satisfaction of the claim.

The tenant testified that she was not in the province for the month of August and upon returning, the tenant discovered that her bank account had been defrauded. The tenant had been in contact with the landlord and asked for a couple of days to get the bank account straightened out. The bank gave the tenant a certified cheque in the amount of \$3,000.00 which the tenant took to the landlord's office on September 15, 2014, after the tenant disputed the notice, and left it on the counter in an envelope that also contained a letter from the tenant's bank manager.

The tenant further testified that rent for October wasn't paid because the landlord entered the rental unit without notice while the tenant was in the shower.

The tenant also denies that other tenants reside in the rental unit and stated that a friend was there when the landlord had attended on September 30, 2014.

The tenant also testified that the notice ending the tenancy that the landlord claims was served on September 5, 2014 was never received by the tenant, and the tenant requests an order cancelling the notice so the tenant can pay all the rental arrears and continue with the tenancy.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act*. In this case, the tenant admits to not paying rent in October or November, 2014. The tenant also testified that a certified cheque was left on the counter in the office of the landlord, but has provided no evidence of that.

I have reviewed the notice to end tenancy and I find that it is in the approved form and contains information required by the *Act*. I also accept the testimony of the landlord that the notice was served by posting it to the door of the rental unit on September 5, 2014. The *Act* specifies that documents served in that manner are deemed to have been served 3 days later, and I so find. The tenant has not paid the rent, and I find that the landlords are entitled under the *Residential Tenancy Act* to an Order of Possession effective on 2 days notice to the tenant, since the effective date of vacancy contained in the notice has already passed.

With respect to the monetary claim, I accept the landlord's testimony and I find that the tenant owes rent in the amount of \$6,000.00.

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

I order the landlord to keep the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$5,300.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further order the landlords to keep the \$750.00 security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,300.00.

The tenant's application is hereby dismissed without leave to reapply.

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 04, 2014

Residential Tenancy Branch

