



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF
MT, CNC AS, RR

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 for cause; 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 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 more time to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for an order allowing the tenant to assign or sublet because the landlords' permission has been unreasonably withheld; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

One of the landlords and the tenant attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing. 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

- Have the landlords established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?
- Should the tenant be permitted more time than permitted by the *Act* to dispute a notice to end tenancy?
- Should the notice to end tenancy be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?

- Have the landlords 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 landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlords should be ordered to allow the tenant to assign or sublet because the landlords' permission has been unreasonably withheld?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable in advance on the 1st day of each month. The landlords also collected a security deposit from the tenant in the amount of \$200.00 in 2 installments, however the tenancy agreement, a copy of which has been provided specifies \$250.00. The landlord testified that the tenant has not yet paid the balance, and no pet damage deposit was collected.

The landlord further testified that the tenant has been in arrears the sum of \$100.00 almost throughout the tenancy. The arrears have carried over, and the tenant has not paid any rent for October or November, 2014. The tenant paid \$400.00 for May on April 30, 2014; \$400.00 for June on June 5, 2014; \$400.00 for July on July 3, 2014; \$500.00 on August 1, 2014 and \$500.00 on September 1, 2014. Each time the tenant paid \$500.00, \$100.00 of it was applied to the previous month, and current rental arrears have now accumulated to \$1,100.00 to the end of November, 2014. The tenant has been paying in cash and the landlord issues a receipt when the full amount has been received, but not for partial payments.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by personally handing it to the tenant on August 28, 2014. The tenant has provided a copy of the notice and it is dated August 28, 2014 and contains an expected date of vacancy of September 30, 2014. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the rental unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Put the landlord's property at significant risk;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord also testified that the rental unit is a 1 bedroom unit of about 500 square feet. The tenant had a friend move a trailer on the premises, and the landlord had it removed, but the occupant moved all of his belongings into the rental unit and the trailer is now back on the property. The tenancy agreement contains an Addendum which states:

1. Premises shall be occupied by only 1 adult, 0 kids, and 1 pet

The tenant's name is contained in that section and it specifies a dog.

2. Premises may not be sublet or occupied by any other person without the written consent of the landlord or agent.

The landlord also testified that the living arrangements with the 2 occupants are awful, and it's a fire hazard and safety issue. Two photographs have been provided.

The landlords seek an Order of Possession, a monetary order for the unpaid rent, recovery of the filing fee and an order permitting the landlords to keep the security deposit in partial satisfaction of the claim.

The tenant agrees that she was served with the 1 Month Notice to End Tenancy for Cause personally on August 28, 2014 but didn't dispute it until September 30, 2014 because she wasn't aware that a dispute process existed. The tenant had had surgery for brain aneurisms and then was having a bad time due to drug interactions. The tenant was hospitalized in July and had to go off one medication which was very difficult, and it took some time to recover.

The tenant agrees that she has not paid the remaining \$50.00 of the security deposit. She testified that she forgot about it and the landlords didn't mention it.

The tenant further testified that initially she asked the landlord who did not attend this hearing if she could reduce rent by \$100.00 for purchasing paint and cleaning supplies, and he agreed. The tenant also has a difficult time getting to the bank and can only withdraw \$400.00 at one time from the bank machine. The other landlord drove her to the bank machine one day and the tenant withdrew the other \$100.00 to give to him, but then he denied he had received it. The tenant does not recall the dates. Generally, it was the landlord who did not attend this hearing that collected the rent in cash and no receipts were provided. The tenant called the landlord who attended this hearing for the collection of rent for October, and the tenant then saw her on the property and the tenant intended to give her the rent, but she didn't seem interested. The same happened for November's rent. The tenant does not dispute that rent for those 2 months has not been paid.

The tenant further testified that the bathroom needs repair and the rental unit has a rat problem, but does not believe that rent should be reduced, and the tenant withdraws that portion of the application.

The tenant does not dispute that a friend has moved in, purely for economic reasons.

Analysis

I have reviewed the material provided by the parties, and I am satisfied that the tenant was personally served with the 1 Month Notice to End Tenancy for Cause on August 28, 2014. The tenant did not dispute the notice within 10 days as required by the *Act*, but testified to some health concerns, and I am satisfied that the tenant should be granted more time to dispute it.

Where a tenant disputes a notice to end tenancy the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, the minimum number of late payments of rent that can be claimed in such a notice is 3. The tenant did not dispute that rent was paid on June 5 and July 3, 2014, but testified that the landlord was not interested in collecting rent for October and November, 2014. The tenant also disputes being in arrears the sum of \$100.00 and the landlord agrees that receipts weren't always issued. The *Act* requires a landlord to give receipts for all payments made in cash, not just full payments. In the circumstances, I am not satisfied that the landlords have established that the tenant has been late with the rent 3 times or more, considering the testimony of the parties.

With respect to the other reasons for issuing the notice, the tenancy agreement clearly states that there is to be one occupant, who is named, and the rental unit is not to be sublet or occupied by any other persons. The tenant signed the tenancy agreement and the Addendum, and has breached that term. Therefore, I find that the landlords are entitled to an Order of Possession.

With respect to the monetary order, I am satisfied that the landlords have established a claim for unpaid rent for October and November, 2014 in the sum of \$1,000.00. Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee. I order the landlords to keep the \$200.00 security deposit and I grant the landlords a monetary order for the difference in the amount of \$850.00.

The tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed as withdrawn.

The tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed without leave to reapply.

The tenant's application for an order permitting the tenant to assign or sublet because the landlords' permission has been unreasonably withheld is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed as withdrawn.

The tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed without leave to reapply.

The tenant's application for an order permitting the tenant to assign or sublet because the landlords' permission has been unreasonably withheld is hereby dismissed without leave to reapply.

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 \$200.00 security deposit in partial satisfaction of the claim and I 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 \$850.00.

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: November 10, 2014

Residential Tenancy Branch

