



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF
 MT, CNR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. 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 tenants for the cost of the application. One of the tenants has applied for more time than permitted by the *Residential Tenancy Act* to dispute a notice ending the tenancy and for an order cancelling a notice to end tenancy for unpaid rent or utilities.

One of the landlords and one of the tenants attended the hearing and the landlord has provided copies of registered mail Registered Domestic Customer Receipts showing that each of the tenants were individually served by registered mail on November 24, 2014 and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The tenant applied to adjourn the hearing in order to provide evidentiary material that was not available to her prior to the commencement of the hearing. The landlord opposed the application to adjourn. The tenant advised that the documentation required was a letter from a social worker who has been away on vacation since the beginning of the month, however the landlord's application was filed on November 20, 2014 and the tenant's application was filed on November 17, 2014. In the circumstances, I find that the tenant had the opportunity to obtain that evidence prior to the beginning of December, 2014 and the application to adjourn was denied.

During the course of the hearing, the tenant advised that the notice ending the tenancy given by the landlord was received by the tenant on November 13, 2014 and since the tenant's application was filed on November 17, 2014, I find that the tenant has disputed

the notice within the time required under the *Residential Tenancy Act* and no further time is necessary to dispute it, and that portion of the tenant's application is dismissed.

The parties each gave affirmed testimony and 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 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

The issues remaining to be decided are:

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the notice to end the tenancy given by the landlord be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 10, 2013 and one of the named tenants still resides in the rental unit. Rent in the amount of \$850.00 per month including utilities 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 tenants in the amount of \$425.00 as well as a pet damage deposit in the amount of \$100.00, both of which are still held in trust by the landlords. Both tenants receive benefit from a government Ministry who pays the landlords directly by mailing a cheque. The landlord further testified that one of the tenants moved out and that tenant's portion of the rent hasn't been paid for August, September, October, November or December, 2014, leaving a balance owing to the landlords in the amount of \$2,125.00. The cheques for that tenant stopped in July, 2014 for the month of August, 2014.

The landlord served the tenant personally with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 12, 2014. A copy of both pages of the 2-page notice has been provided and it is dated November 12, 2014 and contains an expected date of vacancy of November 22, 2014 for unpaid rent in the amount of

\$1,700.00 that was due on November 1, 2014. The arrears have not been paid since the issuance of the notice, however the landlord received rent for December, 2014 at the end of November, 2014 for one tenant's share. The landlord did not issue a receipt and testified that the tenancy agreement provides that a tenant's receipt is the tenant's responsibility to obtain through the Ministry or the tenant's bank.

The landlord further testified that a social worker advised the landlord that an emergency funds cheque in the amount of \$570.00 would be sent to the landlords but it has not yet been received.

The landlord had also filed an application for dispute resolution previously but called into the conference call early, waited for over an hour, and then had to re-apply. The second application was dismissed due to missing evidence.

The landlord also testified that in speaking with a social worker, the landlord was told that the tenant's rental amount would be raised to \$850.00 per month and the Ministry would send the emergency funds of \$570.00, but neither has yet been received, and the parties did not come to any agreements that the amount would be in full satisfaction of the rental arrears.

The landlord seeks an Order of Possession and a monetary order for the unpaid rental amounts to the end of December, 2014 in the amount of \$2,125.00.

The tenant testified that the landlord is not owed the amount claimed. The tenant's roommate moved out at the end of September, 2014, but paid rent via the Ministry on September 24, 2014 for the month of October, 2014. The tenant has provided a document for that tenant showing that an amount of \$441.66 was for rent. The tenant was not able to provide any testimony with respect to why the amount paid is different or who the rent was paid to. The tenant also testified that the Ministry has sent to the landlords a cheque in the amount of \$850.00 for the month of January, 2015, and the landlords have collected \$425.00 from each of the tenants for August, September and October, 2014 and received \$450.00 from the tenant for each of the months of October and November, 2014.

The tenant also testified that the landlords agreed with the social worker to accept \$570.00 in full payment of the arrears of \$1,700.00 as written in the notice.

Analysis

Both parties have provided conflicting testimony. The tenant testified that the Ministry paid the landlords \$425.00 for each of the 2 tenants for August, September and October, 2014 and that the landlords received \$450.00 from the tenant for each of the months of October and November, 2014. The landlord testified that no rent was paid after the issuance of the notice ending the tenancy and then testified that at the end of November, 2014 the landlords received \$425.00 for December's rent, and no rent receipt was issued.

Where a landlord accepts rent after the effective date of the notice ending the tenancy, the landlord must give the tenant something in writing, which is usually a receipt that has clearly marked on it that the money is being accepted for use and occupancy only and does not serve to reinstate the tenancy. In this case, the landlord did not do that, and I find that, from the landlord's testimony, partial rent was received at the end of November, 2014 for the month of December, 2014 and the effective date of vacancy contained in the notice is November 22, 2014. Therefore, I find that the landlords have effectively re-instated the tenancy and the landlords' application for an Order of Possession cannot succeed.

With respect to the monetary claim of the landlords, I am not satisfied from the evidence provided by the tenant that the roommate's share of \$441.66 was paid to the landlords. However, the onus is on the landlords to prove the amount of the claim. In the circumstances, I have reviewed the evidentiary material, and I am satisfied that the landlords are owed \$2,125.00, being half the rent from August to December, 2014. The landlords have also applied to keep the security deposit and pet damage deposit in partial satisfaction of the claim and I so order. The parties agree that the Ministry will be paying, or has already sent a cheque to the landlords for the full amount of rent for January, 2015 as well as a cheque for \$570.00. I hereby order the landlords to keep the deposits totalling \$525.00 in partial satisfaction of the landlords' claim, and I grant a monetary order in favour of the landlords for the difference in the amount of \$1,600.00 and I order that the landlords accept the emergency funds if received and apply that amount to the monetary order, reducing the landlords' claim by that amount.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

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

I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 12, 2014 and the tenancy continues.

I hereby order the landlords to keep the security deposit and pet damage deposit totalling \$525.00 and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,600.00.

I further order the landlords to apply any further monies received from the Ministry except payment for rent for January, 2015 or later to the monetary order of \$1,600.00.

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: December 18, 2014

Residential Tenancy Branch

