



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF
 CNR, MNDC, LRE

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant's amended application seeks an order cancelling a notice to end tenancy 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; and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

The parties both appeared, provided evidentiary material in advance of the hearing, and gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony given, 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.

During the course of the hearing, it was determined that the landlord did not issue a 1 Month Notice to End Tenancy for Cause, and therefore, the landlord's application for an Order of Possession for Cause is hereby dismissed.

Issue(s) to be Decided

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

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlord entering the rental unit without the tenant's permission?
- Has the tenant established that an order should be made suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

The landlord testified that this month-to-month tenancy began approximately 6 or 7 years ago and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord and no pet damage deposit was collected. There is no written tenancy agreement. The rental unit is an apartment in a complex that contains 16 units and the landlord also resides in the complex.

The landlord further testified that the tenant has been late with rent various times, 2 or 3 times per year, and the landlord keeps extending it and the tenant pays up, but it's been a problem and the tenant is currently in arrears \$65.00 for November and has not yet paid rent for December, 2014. He stated that the tenant went to the landlord's suite on or about the 25th of November, although not sure of date, and the landlord refused the rent because he wanted the tenant out and the payment was late. The tenant never tried to pay rent for December, 2014.

On November 22, 2014 the landlord served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided and it is dated December 4, 2014 and contains an effective date of vacancy of November 22, 2014. It states that the tenant failed to pay rent in the amount of \$65.00 what was due on November 1, 2014. No rent has been paid since the issuance of the notice despite verbal warnings to pay the arrears.

With respect to the tenant's application regarding setting conditions or suspending the landlord's right to enter the rental unit, the landlord testified that it should be dismissed. The landlord went into the rental unit on December 2, 2014 because the landlord thought the tenant had moved out. The tenant was not there and nothing had been moved out. That was the only time the landlord ever entered the rental unit. The tenant changed the locks without telling the landlord the next day.

The landlord seeks an Order of Possession and a monetary order in the amount of \$650.00 and recovery of the filing fee.

The landlord's first witness testified that he has lived in the rental complex for almost 20 years. He testified that the landlord asked him to sign a piece of paper with a bunch of typed writing on it, and told the witness where to sign it. The witness believes it was a 10 Day Notice. The witness watched the landlord walk across the parking lot to the tenant's door, but does not know what day or the time of the event.

The landlord's second witness testified that the landlord had told the witness at the beginning of November that the tenant didn't pay full rent for the month. The witness was standing on his porch and the landlord told him to watch because he was going to give the tenant verbal notice of eviction. The witness saw the parties talking and nodding heads, but does not recall the date.

The tenant testified that he moved into the rental unit approximately 7 years ago, about 2007, and rent is currently \$600.00 per month due on the 1st of each month.

The tenant went to the landlord's home on November 23, 2014 and offered the landlord \$60.00 and asked the landlord to sign a receipt, but the landlord declined to accept the money.

The tenant further testified that the landlord claims he went to the rental unit on the 3rd to collect rent, but really it was on the 1st and the tenant told the landlord he was short \$55.00 and \$20.00 of that was actually a personal loan. The actual amount of unpaid rent for November is \$35.00, and the tenant does not know why the landlord is claiming \$65.00.

The tenant also testified that he was served with the notice on November 22, 2014 but a page was missing and the tenant received a document called, "10 Day Notice to End Tenancy for Unpaid Rent or Utilities Proof of Service," a copy of which has been provided for this hearing. The witness is incorrect with respect to the method of service; the landlord served it personally, nothing was posted to the door of the rental unit.

On December 2, 2014 the landlord entered the rental unit twice without the tenant's permission. The first time, the tenant was not there but was on the second entry. The landlord unlocked the door, forced the door open pushing furniture out of the way and said he was going to change the locks within 10 minutes and then left. The landlord did not return, and the tenant changed the locks

The tenant claims \$600.00 to off-set the rent for the landlord entering the rental unit without the tenant's permission. The tenant also seeks an order that the landlord not enter the rental unit without 24 hour written notice for the tenant's safety.

Analysis

In considering the evidence before me, it seems that the landlord has been confused with the eviction process and as a result has served the tenant with the incorrect document and prepared a document containing dates that are not consistent with the landlord's testimony. Therefore, I find that the landlord is not entitled under the *Residential Tenancy Act* to an Order of Possession and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is hereby cancelled and the tenancy continues.

With respect to the landlord's application for a monetary order for unpaid rent, I have heard from both parties and the tenant admits that some rent is owed for November but not the amount the landlord claims, and the tenant testified that part of the landlord's claim is for a personal loan, although the figures provided by the tenant's testimony doesn't add up either. Since the landlord has not been able to prove the higher amount, and the tenant agrees that \$35.00 is owed, I find that the tenant is in arrears of rent the sum of \$35.00 for November, 2014.

The tenant does not dispute that December's rent has not been paid and therefore I find that the landlord is entitled to a monetary order in the amount of \$600.00.

The tenant claims the equivalent of 1 month's rent for the landlord's entry into the rental unit without the tenant's permission. In order to be successful in such a claim, the tenant would have to satisfy me that the tenant was somehow aggrieved by the landlord's actions and that the landlord did so contrary to the *Residential Tenancy Act*. The tenant testified the landlord was there twice in one day and the landlord testified that it was the only day he entered the rental unit. The tenant did not provide any testimony or evidence that he was aggrieved by the landlord's actions, that it inconvenienced him in any way, or that it was done with any malicious intent, and I find no reason to order the landlord to pay the tenant any money. The tenant's application for a monetary order is hereby dismissed without leave to reapply.

With respect to the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit, the tenant testified that the landlord told him he would be returning to change the locks but didn't, and then the tenant changed the locks. Neither party has provided any evidence that the landlord entered on more than one date, and the tenant has not satisfied me that the landlord did so illegally. The

landlord testified that he believed the tenant had moved out. Therefore, I find that the tenants' application is without merit and I hereby dismiss it.

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

Conclusion

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

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The tenant's 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 tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$685.00.

This order is 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 30, 2014

Residential Tenancy Branch

