



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; 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; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

An agent for the landlord attended the hearing accompanied by an observer for training purposes, who did not take part in the proceedings and did not testify. Despite each of the tenants being individually served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on October 31, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord's agent. The landlord's agent gave affirmed testimony, and testified that the documents were served on that date and in that manner, and has provided copies of the Registered Mail Receipts showing the tracking numbers assigned by Canada Post, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

- Should the landlord be permitted to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2012 and the tenants still reside in the rental unit. Rent in the amount of \$1,700.00 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 in the amount of \$850.00 which is still held in trust by the landlord.

A copy of a tenancy agreement has been provided, which shows that the landlord entered into the contract with one of the tenants and another individual. The landlord's agent testified that one of the tenants has vacated the rental unit and the other tenant named in this dispute has moved in and is also a tenant.

The tenants failed to pay rent in full for the month of March, 2014, having only paid \$650.00, leaving a balance of \$1,050.00 outstanding. The tenants have not paid any rent since. The landlord did not know how to go about enforcing the collection of rent, and eventually hired the landlord's agent to evict the tenants and collect rent.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on October 14, 2014. A copy of the 2-page notice has been provided and it is dated October 14, 2014 and contains an expected date of vacancy of October 24, 2014 for unpaid rent in the amount of \$12,950.00 that was due on October 14, 2014. The landlord's agent testified that no rent has been paid since the issuance of the notice.

The landlord also served a 1 Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. The notice is dated October 14, 2014 and contains an expected date of vacancy of November 30, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's agent testified that the notice was served by personally handing it to one of the tenants on October 14, 2014 at the same time as the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants have not served the landlord with an Application for Dispute Resolution disputing either notice.

The landlord's agent also testified that the tenants are now in arrears of rent for the full months of April through December, 2014 in addition to the arrears of March, for a total of \$16,350.00. The landlord seeks an Order of Possession, a monetary order for the unpaid rent, recovery of the filing fee, and an order permitting the landlord to keep the security deposit.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out.

The *Act* also states that once a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice, and if the tenant fails to do so, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out.

In this case, I accept the testimony of the landlord's agent and I find that the tenants have not paid the rent, have not disputed either notice and the tenants are therefore conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession.

With respect to the monetary order, I am satisfied from the evidence and testimony of the landlord's agent that the tenants have continuously failed to pay any rent and the landlord has established a monetary claim in the amount of \$16,350.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I hereby order the landlord to keep the \$850.00 security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord for the difference in the amount of \$15,600.00.

Conclusion

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

I further order the landlord to keep the security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$15,600.00.

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 08, 2014

Residential Tenancy Branch

