



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name] suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the Act) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord sought to amend her application with respect to a request for a monetary order, seeking a lower amount of \$975.00 in unpaid rent. She also sought to amend her application by requesting authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the *Act*.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was served to the tenants on November 2, 2014 by posting the notice on the tenants' door. The 10 Day Notice reflected unpaid rent in the amount of \$975.00 for November 2014 rent. The landlord gave sworn testimony that she witnessed personal service to the tenant of the Application for Dispute Resolution hearing package on November 16, 2014. I accept that the tenants were deemed served with the 10 Day Notice on November 5, 2014 and duly served with the Application for Dispute Resolution hearing package on November 16, 2014.

On the basis of the solemnly sworn evidence of the landlord presented at the hearing, a decision has been reached.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided evidence and sworn testimony that this tenancy originally began on May 1, 2013 with a rental amount of \$975.00 payable on the first of each month. This tenancy began as a one year fixed term tenancy. On May 1, 2014, a second one year fixed term tenancy agreement was signed by both parties. The landlord testified she continues to hold a security deposit in the amount of \$487.50 and a pet deposit in the amount of \$487.50 paid by the tenant on May 7, 2013.

The landlord has applied for an Order of Possession for unpaid rent. The landlord's original application indicated that both November and December rent were 'unpaid' or were being sought at the hearing. The landlord filed their application on November 13, 2014. The landlord testified that she anticipated that December rent would be unpaid. The landlord testified that the tenants paid November rent on November 5, 2014 in cash. The landlord testified that she issued a receipt that stated, "for use and occupancy only" to the tenants for November rent.

The landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent. This 10 Day Notice that precedes this application and hearing references only unpaid rent for November 2014. The landlord testified that the tenants did pay November 2014 rent after receiving the 10 Day Notice on November 5, 2014.

The landlord is also seeking a monetary award of \$975.00 for December 2014 rent and an order that she may retain the tenants' deposits to satisfy that award. She seeks to recover the filing fee for this application, as well.

Analysis

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days

after the date the tenant receives the notice.” Section 46(2) of the Act requires that “a notice under this section must comply with section 52 [form and content of notice to end tenancy]. The landlord complied with section 52 of the *Act* in this matter. The landlord served the 10 Day Notice in an acceptable manner by posting the notice on the door of the rental unit. The landlord posted the notice on November 2, 2014. Subject to section 90(c) of the *Act*, the notice was deemed served 3 days after posting, November 5, 2014.

The tenants paid November 2014 rent within five days of receiving the 10 Day Notice to End Tenancy. In accordance with section 46(4) of the *Act*, the tenants’ payment constitutes reinstatement of the tenancy and the 10 Day Notice is of no force and effect.

I find that the landlord’s inclusion of unpaid rent for December 2014 was premature at the time of her application. Because I find that the tenancy was reinstated when the tenants paid their November rent in accordance with the provisions of the *Act* regarding a 10 Day Notice, the landlord must act in accordance with that finding. Given that no notice was served on the tenant with respect to December rent and that no application for amendment was made in advance by the landlord with respect to December rent, I do not find that the proper steps have been taken to make the tenant aware that the landlord is pursuing an Order of Possession. I cannot consider any application for an Order of Possession before the landlord takes the required steps.

With respect to a monetary order for unpaid December rent at this time, I find the landlord must take the required steps under the *Act*.

Further, because I find the tenancy reinstated and the 10 Day Notice of no force and effect, I also find that I am unable to consider an amended application to retain the security deposit at this time.

As the landlord has been unsuccessful in this application, I dismiss the landlord’s application to recover the filing fee.

Conclusion

I dismiss the landlord’s application to end this tenancy on the basis of the 10 Day Notice issued on November 2, 2014, the landlord’s application for a monetary award for unpaid rent owing from November 2014, and the landlord’s application to recover the filing fee for this application without leave to reapply.

I dismiss the landlord's application for a monetary award for loss of rent owing from December 2014, and to retain the tenants' security deposit with 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: December 19, 2014

Residential Tenancy Branch

