



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINCHESTER MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MT, CNC, MNSD, MNDC, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a One Month Notice to End Tenancy for cause; for an Monetary Order for the return of the security deposit; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant advised me that the tenant's legal name is the one indicated on the tenant's application and the name shown on the landlord's application is the name the tenant is known by. The parties did not raise any objections to the tenant's legal name being corrected on the style of cause and this has now been amended.

Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel the Notice to End Tenancy for cause?
- Is the tenant permitted to have the One Month Notice to End Tenancy for cause set aside?
- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order of Possession based on the 10 day Notice to End Tenancy for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that the tenancy agreement states the tenancy starts on May 01, 2014. The agreement was signed by the tenant on May 13, 2014. Rent for this unit is \$700.00 per month due on the 1st of each month. The tenant paid a security deposit of \$350.00 on May 13, 2014.

The landlord's application

NC testified that the tenant failed to pay rent for November, 2014. A 10 Day Notice was served upon the tenant on November 03, 2014. This Notice indicated that rent of

\$700.00 was unpaid and due on November 03, 2014. The tenant had five days to either pay the outstanding rent or file a claim to dispute the Notice or the tenancy would end on November 13, 2014. NC testified that the tenant did not pay the outstanding rent and has since failed to pay rent due for December, 2014 of \$700.00.

The landlord seeks an Order of Possession and is willing to extend the effective date of the Notice to December 31, 2014. The landlord also seeks a Monetary Order to recover the unpaid rent of \$1,400.00 less the security deposit which the landlord seeks to apply to the rent arrears.

The tenant disputed the landlord's claim. The tenant testified that he did not pay the rent for November as the tenant was not able to move into the rental unit until May 15, 2014 as the previous agent for the landlord had not removed the previous tenant's belongings from the unit or had the unit cleaned after that tenant moved out. The tenant testified that he paid rent for the whole of May and signed the tenancy agreement and paid the security deposit on May 13, 2014. The tenant testified that he spoke to the previous landlord each day in an attempt to get the unit cleared and cleaned ready for the tenant to move in with his children. When this was not done the tenant could not wait any longer so moved in and removed the previous tenant's belongings and cleaned the unit himself before moving his own belongings in on May 16, 2014.

The tenant testified that as he was not reimbursed for the first 15 days in May, he withheld it from his rent for November after discussions with the new agent for the landlord NC. NC said she would speak to the owners of the building but did not get back to the tenant concerning this matter. The tenant agreed that he owes \$350.00 for November's rent and \$700.00 for December's rent but testified that he suffered other losses which he deducted from the rent for loss of food, the purchase of food containers and compensation for cockroaches in his unit from June, 2014. The tenant agreed that he did not dispute the 10 Day Notice as he had already filed an application to dispute the One Month Notice.

NC testified that she was not aware that the tenant could not move into his unit until May 16, 2014 and was only made aware of this by the tenant when the landlord received the tenant's evidence and application for this hearing. NC testified that she did speak to the tenant and agreed that as no move in condition inspection report was completed by the previous landlord and NC has no way of knowing whether or not the unit was clean at the start of the tenancy that the tenant's security deposit would not be requested for damages or cleaning of the unit. NC testified that she had witnessed the tenant at the building on May 14, 2014 when she was walking around the building but does not know if the tenant was residing there at the time.

The tenant's application

The tenant testified that the landlord did give the tenant \$100.00 credit for August and September's rent to cover the loss of food from cockroaches. The tenant seeks a further amount from the landlord for a loss of food and compensation due to the cockroaches in the unit of \$1,800.00. The tenant testified that he first noticed cockroaches in his unit in June, 2014. These bugs were in the tenant's food which had to be thrown away. The tenant purchased plastic bins to keep his food in in August, 2014. The tenant testified that he could not prepare food on the counters or table due to cockroaches. On one occasion the tenant found cockroaches in a stew pot and another time in a pizza the tenant had purchased. Cockroaches were found in the stove fan hood and under the table. The tenant testified that he notified NC verbally in June about the cockroaches and that is why NC deducted \$100.00 from the rent for August and September. NC did get an exterminator in to get rid of the cockroaches on two occasions. NC did provide an electrical zapper for cockroaches; however, the cockroaches did not walk on it so it was ineffective. The tenant testified that although most of the cockroaches have been exterminated the tenant has still seen the odd one in October, 2014.

The tenant seeks to recover the rent paid in May for the first 15 days to an amount of \$350.00 as the tenant was not able to move in and had paid the rent for the entire month of May. The tenant also seeks an Order to recover the security deposit of

\$350.00 as the NC told the tenant that the security deposit would be returned to the tenant because the tenant had to clean the unit at the start of the tenancy.

The tenant testified that when he first agreed to rent the unit the previous landlord's agent told the tenant that there was storage in the building in the old pool room for the tenant's use. NC would not let the tenant use this storage space despite other tenants being able to keep some furniture and tires in this space. The tenant testified that he has to store his winter gear, barbeque and bikes in a friend of a friend's garage and has to pay \$50.00 a month for this storage. The tenant seeks to recover the amount of \$350.00 from the landlord.

NC disputed the tenant's claim. NC testified that she did not give the tenant permission to withhold the rent; NC had a discussion with the tenant concerning the One Month Notice and said she would speak to the owners about the rent but as the tenant did not want to resolve the other issues NC did not feel it was necessary to speak to the owners as the owners still wanted to evict the tenant.

NC testified that the tenant first notified NC about cockroaches and NC had the pest control company attend the building to spray on June 04 with a second spray and baiting on June 28, 2014. On July 03, 2014 they returned to spray the common areas and on July 21 they returned to spray half of the building again including the tenant's unit. NC testified that she was advised by the pest control company that this treatment plan was the best way to get rid of the cockroaches. On August 01, 2014 the tenant advised NC that he still had some cockroaches in his unit. The pest control company were notified and came back to spray the tenant's unit on August 09, 2014. On August 22 they returned again to place more bait in four units. On September 09, 2014 NC obtained two electrical zapper machines and gave one to this tenant to use and one to another tenant. This is the final solution to rid the building of cockroaches.

NC testified that the tenant was given \$100.00 off the rent for August to compensate the tenant for the cockroaches he found on his pizza. NC testified that she asked the tenant

what would be a fair amount. At first the tenant asked for \$50.00 and a friend of the tenants said the tenant should get all the rent deducted. The tenant NC agreed that \$100.00 would be a fair amount. The tenant was given a further \$100.00 rent deduction for September in appreciation of the tenant's patience. The tenant did not indicate to NC that he had spent any amounts on plastic boxes or for the loss of food. NC testified that when they saw that the tenant was claiming \$1,800.00 NC contacted the pest control company who informed NC that they did not consider this to be a fair amount as cockroaches are happy to eat crumbs and could not eat 100.00's of dollars' worth of food.

NC testified that the tenant has not provided any receipts for storage. NC testified that she has explained to the tenant that there are no facilities for storage in the building. There is a pool room which the landlord uses for their maintenance equipment and to store tenant's abandoned belongings in for the required 60 days. The tenant was made aware of this in May, 2014 as there are no facilities for secure storage and the landlord cannot be held responsible for the tenant's belongings.

The tenant argued that he had to throw food away not because cockroaches can eat 100.00's of dollars' worth of food but because the cockroaches could defecate or urinate in the food. The man from the pest control, company said he had never seen an infestation of cockroaches so bad and other tenants used the pool room to store tires and a dresser in.

NC argued that the pest control man said that two other units were the source of the cockroach infestation; the dresser that was stored in the pool room was part of some abandoned belongings from a previous tenant and was given to another tenant after the 60 days period for storage had expired; and the tires were removed by the tenant they belonged too.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for an Order of Possession for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant agreed he has withheld the rent for November and December, 2014; while the tenant felt he had a right to withhold rent of \$350.00 in November as the tenant testified he had over paid the rent in May, the tenant must still pay rent on the day it is due and seek resolution for any overpayment through dispute resolution. Consequently, I find in favor of the landlord's claim to recover a loss of rent of **\$1,400.00** for November and December, 2014.

With regard to the landlord's application for an Order of Possession, a tenant is required to file an application to dispute any Notices to End Tenancy received by the tenant. Had the tenant already filed an application for dispute resolution concerning other matters the tenant may amend that application to include the dispute for any further Notices issued by the landlord. The 10 Day Notice was served upon the tenant on November 03, 2014 by posting it to the tenant's door and is therefore considered to have been served three days later on November 06, 2014. The tenant had five days from that date to file his application to dispute the Notice. The tenant did not do so and therefore the tenant is conclusively presumed to have accepted the end of the tenancy. As I have also determined that there is rent outstanding I find the landlord is entitled to an Order of Possession based on the 10 Day Notice. The effective date of the Notice has been extended by the landlord to December 31, 2014, I therefore grant the landlord an Order of Possession effective on that date pursuant to s. 55 of the *Act*.

As I have upheld the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the One Month Notice to End Tenancy for cause.

I Order the landlord to retain the security deposit of **\$350.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the outstanding rent.

With regard to the tenant's claim to cancel the One Month Notice to End Tenancy for cause; as the tenancy will end based on the 10 Day Notice the One Month Notice no longer has force or effect and has not been dealt with at this hearing.

With regard to the tenant's claim to recover \$350.00 in rent paid for the first half of May; NC has testified that she was not the building manager for the building when the tenant first agreed to rent this unit and has no knowledge of the condition of the unit on May 01, 2014. I find however that the landlord or owners should impart all information to new employees concerning the building and as NC has no knowledge about events that occurred prior to her taking over as building manager later in May I find I prefer the tenant's evidence that the unit was not ready for occupation by the tenant until May 16, 2014. I therefore uphold the tenant's claim to recover **\$350.00** for rent paid for the first half of May.

With regard to the tenant's claim to recover the security deposit; as I have awarded the security deposit to the landlord this section of the tenant's claim is dismissed.

With regard to the tenant's claim to recover \$350.00 for offsite storage; there is no mention of storage being available to the tenant in the tenancy agreement. The tenant has the burden of proof in this matter and is required to provide corroborating evidence to meet the burden of proof. The tenant argued that this was a verbal agreement with the previous building manager; however, by their very nature verbal agreements are almost impossible for a third party to determine. Consequently, I find the landlords evidence more compelling that there is no storage provided for tenants and I therefore dismiss the tenant's claim to recover compensation for the loss of this facility.

With regard to the tenant's claim concerning cockroaches; I find the parties agreed that the building had a problem with cockroaches; I also find NC acted in a timely manner to bring in a pest control company to deal with this problem and continued with a course of action over many months to attempt to eradicate the cockroaches. Cockroaches are notoriously difficult to get rid of and I find the tenant's claim that he continued to have cockroaches has some merit. The tenant has been given a rent reduction for August and September of \$200.00 for cockroaches in found in the tenant's pizza and in appreciation of the tenant's patience while the landlord dealt with this situation. However, the tenant had to continue to throw food away due to the presence of cockroaches and had to live in the unit with the consent presence of cockroaches over the period between June and October while the extermination process took place. I find therefore the tenant is entitled to further compensation of \$150.00 per month for June, July and October and an additional \$50.00 per month for August and September to a total amount of **\$550.00**.

The tenant has provided no evidence to support his claim that he had to purchase plastic bins to store food in or for the costs incurred for any bins purchased. This section of the tenant's claim is therefore dismissed.

As both parties claims have some merit I have offset the tenant's claim against that of the landlord. The landlord will receive a Monetary Order for the following amount:

Unpaid rent for November and December	\$1,400.00
Less security deposit	(-\$350.00)
Amount due to the landlord	\$1,050.00
Rent for first 15 days of May, 2014	\$350.00
Compensation for cockroaches	\$550.00
Total amount due to the tenant	\$900.00
Offset tenant's award against landlord's award. Amount due to landlord	\$150.00

As both parties claims had merit then both parties must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of tenant's monetary claim. The tenant has been awarded the sum of **\$900.00** which has been offset against the landlord's monetary award.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$150.00**. The Order must be served on the tenant. If the tenant fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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 16, 2014

Residential Tenancy Branch

