



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The "tenant JJ" did not attend the hearing, although it lasted approximately 63 minutes. The two tenants, "tenant LLH" and "tenant ASLH" (collectively "two tenants") and the landlord attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenants with the landlord's application for dispute resolution hearing notice on December 1, 2014. The two tenants confirmed receipt of the landlord's application. In accordance with sections 89 and 90 of the *Act*, I find that the two tenants LLH and ASLH were duly served with the landlord's application and that the tenant JJ is deemed served with the landlord's application.

Preliminary Issues

The landlord testified that a 10 Day Notice, dated November 20, 2014 ("10 Day Notice"), was posted to the door of the tenants' rental unit, on November 20 or 21, 2014, although he could not recall the exact date. Although he stated that he took a photograph of the posting, he did not submit it with his application. The landlord did not produce a witness to confirm the posting. The two tenants testified that they did not

receive the 10 Day Notice. I find that all three tenants were not served with the landlord's 10 Day Notice, as required by section 88 of the *Act*, as the two tenants gave sworn testimony they had not received it, the landlord was unsure of the date of service, and the landlord did not provide any witness testimony to confirm the posting.

The landlord did not submit a copy of the 10 Day Notice with his application, but stated that he would do so after the hearing. I received a copy of the landlord's 10 Day Notice before writing this decision. At the bottom of the 10 Day Notice, it is issued in the name of another landlord, RD, not the landlord named in this application. The middle of the notice does not even provide the landlord's name, as this area has been left blank. The date of the notice has been changed to November 20, 2014, and the previous date is unreadable, as it was been written over. The effective move-out date has also been changed and the previous date is unreadable, as it has been written over. I am not considering this 10 Day Notice for any substantive portions of my decision; however, I note the above details because I have found the notice to be invalid, and the landlord is not permitted to re-serve or re-use this 10 Day Notice for this tenancy.

As the tenants were not served with the 10 Day Notice, as required by section 46(1) of the *Act*, I dismiss the landlord's application for an order of possession for unpaid rent. The 10 Day Notice, dated November 20, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Issues to be Decided

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 testified that this periodic tenancy began on October 1, 2014. The landlord maintained that monthly rent in the amount of \$1,375.00 is payable on the first day of each month. A security deposit of \$637.00 was paid by the tenants at the end of September 2014, and the landlord continues to retain this deposit.

The landlord confirmed that no written tenancy agreement exists for this tenancy, as it was an oral agreement. The three tenants occupy the main floor of the landlord's house

and continue to reside in the rental unit. The landlord stated that no one is currently occupying the basement unit of the house.

The landlord seeks a monetary order in the amount of \$3,212.00 against the tenants. He testified that rent for November 2014 in the amount of \$462.00 is unpaid. He also stated that rent in the amount of \$1,375.00 for each of December 2014 and January 2015, are unpaid. The landlord seeks to retain the tenants' security deposit in the amount of \$637.00 in partial satisfaction of the monetary award.

There is conflicting testimony regarding the amount of rent paid by each tenant per month. The landlord and two tenants testified that the tenants JJ and ASLH pay \$375.00 each per month for rent, directly from social assistance to the landlord. However, the landlord also stated that he received \$458.00 from social assistance on behalf of tenant JJ for November 2014 rent. The landlord confirmed that he received \$455.00 cash for November 2014 rent from tenant LLH. The landlord stated that \$462.00 was outstanding for November 2014 rent for tenant ASLH only.

The tenant LLH confirmed that she had not paid rent for December 2014 or January 2015, but was unsure of the rental amounts she owed. She stated that she pays \$625.00 each month, after the \$750.00 total is paid by social assistance for tenants JJ and ASLH. However, both tenant LLH and the landlord agreed that she paid \$455.00 cash for rent for each of October and November 2014. The tenant LLH confirmed that she had not received any receipts from the landlord for her cash rent payments.

The tenant ASLH stated that he assumes that his November 2014, December 2014 and January 2015 rent amounts were paid directly by social assistance to the landlord, as he has not heard otherwise. The two tenants testified that tenant JJ called social assistance and was told that her December 2014 rent had been paid to the landlord.

Analysis

While section 26 of the *Act* requires tenants to pay rent when it is due under the tenancy agreement, the tenants must have notice of the monthly rental amount that they each owe. The tenants are to be given an opportunity to either pay their rent or to file an application for dispute resolution.

There is no written tenancy agreement for this tenancy and it is unclear whether a separate oral tenancy agreement was made with each tenant or an oral agreement was made with all three tenants together. The landlord is unaware of the monthly rental amount payable by each tenant. The landlord receives direct rental payments from

social assistance for tenants JJ and ASLH and a separate payment from tenant LLH. It is clear that the landlord and the two tenants LLH and ASLH are unaware of the monthly rent due for this tenancy, as each has been paying different amounts in different months.

The landlord provided conflicting testimony regarding the monthly rental amounts owed and paid by each tenant. The landlord did not provide any documentary evidence with his Application. He did not provide a rent ledger, bank or other financial records to confirm what rent payments were made and what payments are outstanding for each tenant. As the landlord receives direct payments for tenants ASLH and JJ from social assistance, those tenants are unaware of when their rent is unpaid, unless they are told. The landlord did not produce any records to confirm which social assistance payments were made and which payments are outstanding for tenants ASLH and JJ. The landlord did not meet his burden of proof to demonstrate that the tenants owe outstanding rental amounts for this tenancy and that they had notice of these amounts.

The tenants did not receive the 10 Day Notice from the landlord and therefore, did not have notice of their outstanding rent. The landlord stated that the 10 Day Notice only indicated that rent in the amount of \$462.00 was due for November 2014.

Tenant ASLH stated that his rental amounts were paid for November 2014, December 2014 and January 2015. However, the landlord confirmed that rent for November 2014 was paid by everyone except tenant ASLH in the amount of \$462.00. The two tenants confirmed that rent on behalf of tenant JJ was paid for December 2014. However, the landlord stated that rent in the amount of \$1,375.00 was unpaid by all tenants for each of December 2014 and January 2015.

On a balance of probabilities, I find that the landlord's evidence was insufficient to establish that tenant ASLH owes \$462.00 for November 2014 rent and that this amount is unpaid. The landlord confirmed that tenant LLH paid \$455.00 cash and tenant JJ paid \$458.00 via social assistance cheque sent directly to the landlord, for November 2014 rent. The landlord did not meet his burden of proof and provide records from social assistance to show what payments had and had not been made on behalf of tenant ASLH. Tenant ASLH confirmed that as far as he was aware, the payment for his November 2014 was made by social assistance. The landlord did not provide documentary proof to the contrary. Accordingly, the landlord's application for a monetary award of \$462.00 for unpaid rent for November 2014, is dismissed without leave to reapply.

While the landlord claimed for “December” rent in the “details of the dispute” in his written application, he did not include the rental amount sought. The tenants did not have notice of the amount being sought by the landlord for December 2014 rent, in order to appropriately respond to the landlord’s monetary application. During the hearing, the landlord orally requested \$1,375.00 for December 2014 rent. December 2014 rent was not yet due at the time that the landlord’s application was filed on December 1, 2014. The tenants had until 11:59 p.m. on December 1, 2014, to pay for their rent. The landlord only applied for “unpaid rent” in his application, and December 2014 rent was not yet unpaid at that time. The landlord did not apply for a monetary order for compensation for loss under the *Act*, regulation or tenancy agreement, for December 2014 rent. Accordingly, the landlord’s application for unpaid December 2014 rent, in the amount of \$1,375.00, is dismissed with leave to reapply.

January 2015 rent is not included in the landlord’s “details of the dispute” in his written application, as he only made a request for \$1,375.00 orally at the hearing. The tenants did not have notice of the amount being sought by the landlord for January 2015 rent, in order to appropriately respond to the landlord’s monetary application. January 2015 rent was not yet due at the time that the landlord’s application was filed on December 1, 2014. The landlord only applied for “unpaid rent” in his application, and January 2015 rent was not yet unpaid at that time. The landlord did not apply for a monetary order for compensation for loss under the *Act*, regulation or tenancy agreement, for January 2015 rent, in anticipation of this amount. Accordingly, the landlord’s application for January 2015 rent, in the amount of \$1,375.00, is dismissed with leave to reapply.

Although the tenant LLH admitted that she had not paid for December 2014 or January 2015 rent, neither she nor the landlord are aware of the amount she owes for each month, there is no written tenancy agreement to confirm this amount and both the landlord and tenant LLH testified as to different rental amounts paid by tenant LLH in previous months. In any event, the landlord’s applications have been dismissed, as outlined above, for other reasons.

The landlord’s application to retain the tenants’ security deposit in partial satisfaction of the monetary award, is dismissed with leave to reapply. This tenancy is continuing and the security deposit is to be dealt with in accordance with the *Act*.

As the landlord was unsuccessful in his Application, he is not entitled to recover the filing fee from the tenants. The landlord must bear the cost of his own filing fee.

Other Issues raised during the hearing

The tenant LLH stated that there was no heat in the rental unit and there was also mold in the rental unit. The landlord is cautioned and advised to consider sections 27 and 32 of the Act, in this regard:

Terminating or restricting services or facilities

- 27** (1) *A landlord must not terminate or restrict a service or facility if*
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
 - (b) providing the service or facility is a material term of the tenancy agreement.*
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

Landlord and tenant obligations to repair and maintain

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Conclusion

The landlord's application for an order of possession for unpaid rent, is dismissed. The landlord's 10 Day Notice, dated November 20, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is at liberty to make another application for an order of possession for unpaid rent or utilities, upon issuing a valid 10 Day Notice that is properly served in accordance with the *Act*.

The landlord's application for a monetary award of \$462.00 for unpaid rent for November 2014, is dismissed without leave to reapply.

The landlord's application for a monetary award of \$2,750.00 total for December 2014 and January 2015 unpaid rent, is dismissed with leave to reapply.

The landlord's application to retain the tenants' security deposit in partial satisfaction of the monetary award, is dismissed with leave to reapply, as this tenancy continues.

The landlord is not entitled to recover the filing fee from the tenants.

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: January 09, 2015

Residential Tenancy Branch

