



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity to be heard under oath, to present evidence and to make submissions. The Witness provided evidence under oath.

Preliminary Matter

At the onset of the hearing the Tenant indicated that an evidence package was given to the RTB a few days prior to this hearing and that no copy of that package was given to the Landlord. As the Landlord has not received a copy of this evidence, to accept this evidence for consideration would prejudice the Landlord and I therefore decline to consider this evidence.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord states that the tenancy started on April 1, 2014 with rent of \$1,650.00 payable monthly on the first day of each month. The Tenant states that the tenancy started on February 1, 2014 after the Parties had met on January 31, 2014 and that the tenancy agreement provided by the Landlord carries a signature that is not the first named Tenant's signature.

The Landlord states that Tenants signed a tenancy agreement a few days before the Tenants moved into the unit. The Landlord states that the Tenants moved into the unit on April 1, 2014. It is noted that the tenancy agreement provided by the Landlord is signed on April 1, 2014. The Landlord states that he has limited recall of the circumstances for the signing of the tenancy agreement. The tenancy agreement sets out the names of the Tenants and the Landlord states that although the second named Tenant was present when the tenancy agreement was signed, only the first named Tenant signed as this person indicated that they would sign for both Tenants. The Landlord states that prior to this tenancy the unit had been empty but cannot recall how long it was empty. The Landlord states that they cannot recall when the previous tenants moved out of the unit.

The Landlord states that no rent was owed for November 2014. The Landlord also states that the Tenant paid \$360.00 on November 2, 2014 in cash and that no receipt was provided. The Landlord states that no rent was received for December 2015. The Parties agree that on December 4, 2014 the Tenant was given a 10 day notice to end for unpaid rent (the "Notice") for unpaid rent of \$2,990.00. The Tenant states that the Tenant disputed this Notice, that a hearing was held and that the Landlords did not show up at the hearing. The Tenant states that she did not understand what she was supposed to do when the Landlord did not appear. The Tenant states that she didn't think the hearing could continue without the Landlord and so withdrew the application.

The Tenant states that the Tenant rented the whole house at the onset of the tenancy and that in November 2014 it was agreed with the Landlord that the Tenant would rent only the upper part of the house as of December 1, 2014 for \$825.00. The Tenant states that she paid the Landlord directly for the rent for December 2014 rent. The Tenant states that a tenant was found in November 2014 for the basement suite for December 1, 2014 and that the Landlord met with this tenant in November 2014 and agreed to rent the basement unit to this tenant. This tenant, the Witness, confirms this evidence and states that the rent agreed was \$825.00. The Witness states that the Landlord was paid rent in cash for the basement suite for December 2014 and January 2015 and that the Landlord did not provide receipts.

The Landlord states that the amount indicated in the Notice is made up of the rental arrears from November and unpaid rent for December. The Landlord states that the amount indicated in the Notice also includes \$50.00 for a filing fee. The Landlord states that he was told by the RTB to add this amount to the unpaid rent. The Landlord states that they did not rent the basement suite to the Witness and deny knowing or meeting the Witness although the Landlord states that they did see this person around the unit.

The Tenant states that she has not paid February 2015 rent as she has been unable to contact the Landlord for some time and the Landlord is refusing to answer calls. Both the Tenant and the Witness state that they are moving out of the unit at the end of February 2015. The Witness states that the basement unit is damp and that the septic system needs repairs that the Landlord refuses to make.

Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where, inter alia, a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired. Section 62 of the Act provides that an application may be dismissed where there are no reasonable grounds for the application. The grounds for an order of possession include the issuance of a valid notice to end tenancy.

I found the Tenant's evidence on the agreement to rent only the upper unit, the reduced amount of rent payable as result of this agreement and the making of the rent payments to be straightforward and credible. I also found the Witness evidence to be straightforward, credible and supportive of the Tenant's evidence. In contrast I find the Landlord's evidence overall to be inconsistent, vague and containing contradictions. The Landlord provided no evidence of accounting records and states that no receipts were issued for the collection of cash from the Tenant. For these reasons I find that the Landlord has provided insufficient evidence to find on a balance of probabilities that rents were owed by the Tenant as set out in the Notice.

Although the Tenant withdrew its application to dispute the Notice and this may not in itself lead to a determination that no application was made in the time required, given the invalidity of the

Notice in the first place I find that the Landlord has not provided reasonable grounds to end the tenancy and I dismiss the Landlord's application.

At the hearing the Tenant was cautioned to pay any outstanding rent. I also caution the Landlord not to avoid the Tenant's payment of rent. The Landlord is at liberty to issue a new 10 day notice to end tenancy for unpaid rent should the Tenant fail to pay the rent.

Conclusion

The Landlord's application is dismissed.

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: February 06, 2015

Residential Tenancy Branch

