



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 by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- 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 full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month, although no written tenancy agreement exists. The landlord collected a security deposit from the tenants in the

amount of \$400.00 in 2 installments commencing in April, 2014, which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord also testified that no move-in condition inspection report was completed at the beginning of the tenancy. The tenants needed a place to rent right away and the landlord told them that it would take a month to prepare it for a new tenancy due to the condition left by previous tenants. The tenants wanted to move in right away regardless of its condition, and by agreement the landlord paid the tenants for dump trips and gasoline costs.

The landlord further testified that a portion of the tenants' rent is paid by a government Ministry, and the balance is paid by the tenants. The rent was not paid in full for the month of January, 2015, however the landlord received \$400.00 from the Ministry for one of the tenants for January's rent in December, 2014.

On January 2, 2015 the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. The landlord testified that both tenants were present at the time and refused to take it so the landlord left the notice on the television in the hallway of the rental unit. The notice is dated January 2, 2015 and contains an expected date of vacancy of January 12, 2015 for unpaid rent in the amount of \$800.00 that was due on January 1, 2015. The landlord testified that an error was written on the notice, being that \$400.00 was unpaid, not \$800.00; the landlord thought the full month's rent was to be written into that field on the form.

Since the issuance of the notice, the landlord collected \$50.00 from the tenants on January 3, 2015 as well as \$100.00 on January 13, 2015 and \$40.00 on January 17, 2015, which was a payment made after the Landlord's Application for Dispute Resolution was filed. The application claims \$250.00, being the outstanding rent after the January 13, 2015 payment was made.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice to end the tenancy.

The landlord seeks an Order of Possession as well as a monetary order for \$210.00 for January's rent, and February's rent as well. The landlord seeks an order permitting the landlord to keep the security deposit.

The first tenant testified that the Ministry made an error with respect to payments. The tenant is being investigated by the Ministry with respect to Revenue Canada. The tenants made partial payments as they could. The Ministry pays rent in the month prior

to the month that rent is due, so January's rent was paid for one tenant on December 17, 2014. The tenants did not file an application for dispute resolution disputing the notice because they didn't know it was required.

The second tenant testified that the Ministry withholds cheques if clients fail to do as instructed, such as provide forms or attend doctor appointments, and is withholding the cheque. The landlord gave the tenant a ride to the Ministry office and both parties spoke to someone there. The Ministry personnel advised that they would pay the landlord by direct deposit. The tenant has received a cheque stub from the Ministry showing that rent has been deducted.

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 the end of the tenancy. In this case, the tenants have not paid the rent in full and have not disputed the notice, and therefore, I must find that the tenants are 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 claim, the tenants do not dispute the amount of rent outstanding except that one tenant states that the Ministry has deducted \$400.00 from his allowance for rent, but the landlord has not yet received that money.

In the circumstances, I find that the landlord has received \$400.00 from the Ministry in December, 2014 for rent for January, 2015. The tenants then paid \$190.00, leaving a balance for January of \$210.00. The landlord has not yet received rent for February, 2015 and the tenant believes the Ministry has sent \$400.00 to the landlord. Since the rental unit was not prepared for occupation at the commencement of the tenancy, even though by agreement of the parties, I am not satisfied that the landlord is entitled to a full month's rent for February, and I grant half a month's rent, for a total of \$610.00.

The landlord currently holds a security deposit of \$400.00 which I order the landlord to keep in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference of \$210.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee. In the event that the landlord receives any amount from the Ministry on behalf of either tenant, the landlord must return any amount over \$260.00 to the tenants.

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 \$400.00 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 \$260.00.

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: February 10, 2015

Residential Tenancy Branch

