



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call following an order of the director after a review of the original Decision. The original Decision of the director is dated January 12, 2015 and dealt with the landlord's application for an Order of Possession and a monetary order for unpaid rent or utilities by way of the Direct Request process, without an oral hearing. The order of the director for a new hearing was made on January 25, 2015.

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.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 13, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$950.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$475.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord further testified that the tenants have not paid any rent since November 7, 2014 and are in arrears \$2,850.00 to the end of February, 2015. On September 1, 2014 the landlord issued a notice to end the tenancy, but the tenants didn't move out. On November 4, 2014 the landlord issued another notice to end the tenancy and the tenants paid the rent in full on November 7, 2014, but no rent has been paid since.

On December 3, 2014 the landlord put another notice in the mailbox of the rental unit, and on December 10, 2014 the landlord discovered that proof of service would be required, so the landlord prepared another notice. A copy has been provided, it is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 10, 2014 with an expected date of vacancy of December 20, 2014 for \$950.00 in unpaid rent that was due on December 1, 2014. The landlord served the notice by registered mail and has provided a copy of the Canada Post tracking record however it was returned to the landlord on January 2, 2015 unclaimed. The tenants were successful with the application for a review hearing because the landlord used the wrong postal code of the tenants' mailing address on the registered mail, and the tenants claimed they didn't receive it. The landlord also told the tenants that an application for an Order by way of direct request would be made because the tenants refused to sign for it when the landlord sent that by registered mail.

The first tenant testified that there is a huge leak in the bathroom of the rental unit and the tenants can't use the shower. Further, the landlord called the tenant a bitch and used other inappropriate language and threatened to evict. The tenant tried to call the landlord numerous times but calls were never returned. The tenants did not receive any documents and don't know what's going on.

The tenant also testified that the landlord said the tenants didn't have to pay rent until the leak was fixed, and when the tenant asked for it in writing, the landlord assured the tenant it wasn't necessary because it would be done right away. The landlord had asked the other tenant to fix the leak without getting a plumber, for \$8.00 per hour. When the tenant found out, she called the landlord and told the landlord to call a plumber. An argument ensued and the landlord said it would cost too much and said that it could possibly be taken off the rent.

When asked if the rent has been paid, the tenant replied that, "When the landlord fixes the leak, we'll pay the rent."

The second tenant testified that he had agreed to cut away the rotting drywall on the ceiling thinking that it would be a quick job. However, he discovered that it was a bigger job and was later told by the first tenant that the landlord got hostile because the landlord was told that the tenants were refusing to do repairs.

Analysis

Under the *Residential Tenancy Act*, the only defense to unpaid rent is fraud. In this case, the tenants admit that they have not paid the rent, and I find that the landlord is entitled to a monetary order in the amount of \$2,850.00.

With respect to the notice to end the tenancy, the tenants have obviously received the notice and have refused to pay the rent. Perhaps repairs are required in the rental unit, however the *Act* states that a tenant must pay the rent even if the landlord has failed to

comply with the *Act*. In this case, I find that the tenants have simply refused to pay the rent without colour of right.

I have reviewed the notice to end the tenancy, and find that it is in the approved form and contains information required by the *Act*. I also find that the tenants received the notice no later than February 12, 2015 which is the date the landlord provided evidentiary material for this hearing. The tenants did not dispute that date, and no issues with respect to service or delivery of evidence for this hearing were raised. The tenants did not pay the rent and the landlord is entitled under the *Act* to an Order of Possession.

The *Act* also states that following a review, I may confirm, vary or set aside the original Decision or Order. Having found that the tenants have no defense to unpaid rent, I hereby confirm the Order of Possession made on January 12, 2015.

I further accept that since the notice was issued, the tenants have fallen further into arrears of rent, and I hereby set aside the monetary order made by the director on January 12, 2015, and I hereby grant a monetary order in favour of the landlord in the amount of \$2,900.00, which includes recovery of the filing fee for the Direct Request application..

Conclusion

For the reasons set out above, the Order of Possession made by the director on January 12, 2015 is hereby confirmed and remains in full force and effect.

I hereby set aside the monetary order made by the director on January 12, 2015 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 \$2,900.00.

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 20, 2015

Residential Tenancy Branch

