



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on an undisputed One Month Notice to End Tenancy for cause, for a monetary order for unpaid rent and damages to the rental unit, and to recover the filing fee for the Application.

The Landlord and one of the Tenants appeared. Both gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord testified that the Tenants had been served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 16, 2015. Under the Act the Tenants were deemed served five days after mailing. As stated herein, one of the Tenants appeared and participated in the hearing and a second Tenant called into the hearing, albeit too late, as a decision had been given and the hearing was concluding. As two of the Tenants called into the hearing, I find they have been sufficiently served with the Notice of Hearing for the purposes of the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the conclusion of the hearing, one other Tenant "J.H." called into the hearing.

I explained to this Tenant that the tenancy was ending as they had not disputed the Notice to End Tenancy and that she had called into the hearing too late; however, this Tenant then immediately disconnected from the hearing without saying anything further.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Is the Landlord entitled to rent owed?

Background and Evidence

The Landlord and the three Tenants entered into a written tenancy agreement on September 16, 2014. Although it appears the Tenants paid rent to the Landlord individually, I find the Tenants were joint-tenants under this Agreement. The monthly rent was set at \$1,400.00 and according to the testimony rent was due on the first of the month. The Tenants paid a security deposit of \$700.00 on or about September 15, 2014.

The Landlord testified that following receipt of her tax assessment from the municipal authority she wanted a realtor to go through the rental unit and assess its value. The Landlord testified that three days' notice was given to the Tenants and the realtor then entered the rental unit.

According to the testimony of the Landlord the realtor was barred from entering two of the three bedrooms as the Tenants had installed locks on these doors without permission to do so. The Landlord also testified that the realtor reported to her that the Tenants had damaged other parts of the rental unit as well.

The Landlord has provided a copy of a letter from the realtor in evidence. The realtor confirms there was a broken fence and other damages inside the rental unit.

The Landlord then issued the Tenants with a One Month Notice to End Tenancy for cause, by sending it registered mail to each of the Tenants on January 26, 2015. The Landlord has provided copies of the registered mail receipt. I find the Tenants were duly served with the One Month Notice to End Tenancy. The effective end date on the Notice was February 28, 2015. The Notice contains information for the Tenants that they had 10 days after the date of service to dispute the Notice or the tenancy would end.

The Landlord has also provided a copy of a payment ledger indicating as of the end of January 2015, \$367.00 was still owed in rent.

The appearing Tenant testified that she received a copy of the Notice to End Tenancy.

The appearing Tenant further testified that neither she nor the other Tenants filed an Application to dispute the One Month Notice to End Tenancy.

The appearing Tenant also testified that she had not paid the Landlord \$367.00 in rent.

The Tenant testified that the Landlord could deduct this amount from the security deposit held. This Tenant also testified that she had already vacated the rental unit but still had a bed in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants did not make an Application to dispute the Notice to End tenancy within the required time and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$417.00** comprised of rent due of \$367.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain **\$417.00** from the security deposit held in compensation for the above amounts.

The balance of the security deposit of \$283.00 must be dealt with in accordance with the Act at the end of the tenancy.

The Tenants are required to make repairs to any damages they may have caused prior to vacating the rental unit under the order of possession. Therefore, I find the Landlord was premature in claiming for damages and I dismiss the monetary claim of the Landlord for damages to the rental unit with leave to reapply.

Conclusion

The Tenants failed to dispute the Notice to End Tenancy.

The Tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy that was indicated as February 28, 2015.

The Landlord is granted an Order of Possession effective two days after service upon the Tenants and may keep **\$417.00** from the security deposit in compensation for the unpaid rent and filing fee for the Application.

The balance of the security deposit must be dealt with in accordance with the Act.

The Landlord's monetary claim for alleged damage to the rental unit is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: March 05, 2015

Residential Tenancy Branch

