



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF, ET

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order ending the tenancy early; and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being individually served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 18, 2015, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the tenants were served on that date and in that manner and has provided copies of the registered mail domestic receipts as well as the cash register receipt from Canada Post bearing that date, and I am satisfied that each of the 2 tenants has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the tenancy end earlier than a notice ending the tenancy would take effect?

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord testified that this fixed term tenancy began on January 1, 2015 and expires on June 30, 2015, and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided, which states that rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month. However the landlord testified that the parties agreed to an increase in rent because the tenants wanted to include the garage. That increase was not made in writing but the tenancy agreement states that parking for one vehicle is included, but it does not indicate that the garage is included.

On January 6, 2015 the landlord collected a security deposit from one of the tenants in the amount of \$212.50 although the tenancy agreement specifies that the deposit required is \$425.00. The \$212.50 that was collected is still held in trust by the landlord.

The landlord further testified that the tenants have fallen into arrears of rent. The landlord received \$375.00 from one tenant and \$425.00 from the other tenant for the month of February, 2015. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on February 4, 2015. Both pages were served although only one page has been provided for this hearing. The notice is dated February 4, 2015 and contains an expected date of vacancy of February 15, 2015 for unpaid rent in the amount of \$450.00 that was due on February 1, 2015. The landlord also wrote an additional comment on the notice showing that the amount owed includes the rental increase and the amount of the security deposit that remains unpaid, and testified that he didn't know he should not include the security deposit. However, one of the tenants paid \$425.00 for the month of March and nothing has been paid by the other tenant, which has increased the arrears.

The landlord also testified that the tenants broke a window in the rental unit and has provided a letter from another tenant stating that a friend of the tenants broke the window and that the writer advised the landlord to ensure that the writer would not be held responsible. The landlord has also provided a copy of an estimate from a glass installation company which shows a cost of "Approximately \$60.00," plus tax. The landlord claims \$60.00 for the cost of the repair.

The letter also states that the writer had previous possession of the garage and the landlord discounted that person's rent by \$75.00 and the writer gave the key to the tenants. It also states that the tenants are still in possession of the garage.

The landlord seeks an Order of Possession, a monetary order in the amount of \$625.00 for unpaid rent, a monetary order for the damaged window in the amount of \$60.00, and recovery of the \$50.00 filing fee.

Analysis

Firstly, with respect to the application for an Order of Possession, 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, I accept the undisputed testimony of the landlord that the notice was served by posting it to the door of the rental unit on February 4, 2015, which is deemed to have been served 3 days later, or February 7, 2015. The tenants did not pay the rent in full and did not dispute the notice, and I find that the tenants are conclusively presumed to have accepted the end of the tenancy. The effective date has already passed, and I grant the Order of Possession on 2 days notice to the tenants.

With respect to the landlord's application for an order ending the tenancy early, the *Act* specifies that in certain conditions a landlord may apply for an Order of Possession without serving a notice to end the tenancy. That does not apply in this case; the landlord has served the notice, and I dismiss that portion of the landlord's application.

With respect to the monetary request for unpaid rent, the *Act* states that a landlord may only increase rent if the parties agree in writing. The parties did not agree in writing and I find that the rental amount is \$850.00 per month. The tenants paid \$800.00 for the month of February, 2015, leaving a balance owing of \$50.00. The tenants further paid \$425.00 for March, leaving another balance of \$425.00, for a total of \$475.00. I find that the landlord has established a claim for unpaid rent in the amount of \$475.00.

With respect to the landlord's claim for damage to the window, in order to be successful, the onus is on the landlord to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

In this case, I have no evidence before me of the condition of the window prior to the commencement of the tenancy, and therefore, the landlord has failed to satisfy element 2 in the test for damages, and I dismiss that portion of the landlord's claim.

I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

The landlord's application for an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect is hereby dismissed.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further 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 \$525.00.

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: March 12, 2015

Residential Tenancy Branch

