



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

It was undisputed that the landlord and the tenant BM, along with a former co-tenant, executed a written tenancy agreement in 2010 requiring the tenants to pay rent of \$750.00 per month. The landlord collected a \$375.00 security deposit. In 2011 the former co-tenant moved out and TC moved in.

The landlord testified that the rent was increased from \$750.00 to \$775.00 by way of a Notice of Rent Increase approximately 2 – 2.5 years ago. BM testified that a Notice of Rent Increase was never served upon them and that rent had gone from \$750.00 to \$700.00 to \$775.00 during the tenancy.

The landlord did not provide a copy of the tenancy agreement or a Notice of Rent Increase for my review.

Both parties were in agreement that the landlord had been receiving \$375.00 directly from Income Assistance on behalf of TC and that BM had been giving the landlord \$400.00 for the past few years.

Both parties provided consistent testimony that the landlord received \$375.00 from Income Assistance for the month of March 2015 and that BM did not pay the landlord any rent.

The landlord testified that both pages of a 10 Day Notice to End Tenancy for Unpaid Rent were personally served upon BM on March 2, 2015. BM testified that he found the first page of a 10 Day Notice stuffed under his door on March 2, 2015. Both parties agreed that BM called the landlord shortly thereafter to advise the landlord BM received only one page of the 10 Day Notice. The tenant submitted that since he did not have both pages he disregarded the Notice.

The landlord testified that he returned to the property to give BM another 10 Day Notice that included both pages. The landlord provided different versions of events as to when this occurred. At one point he testified that another copy was given to BM in the following week and later in the hearing the landlord testified that another copy was given to BM three days later in the same week.

The tenant testified that the landlord did not return to the property to give him a 10 Day Notice that had both pages until he was served with the hearing package for this proceeding on March 17, 2015. The tenant submitted that the 10 Day Notice served upon him on March 17, 2015 had an effective date of March 12, 2015 and since that pre-dated the date he was served he disregarded the Notice.

Despite the parties different versions of events concerning service of the 10 Day Notice the tenants stated they would be moving out of the rental unit on April 30, 2015 as they were not satisfied with the landlord's lack of maintenance. The landlord was agreeable to permitting the tenants occupancy until April 30, 2015. The tenants had no object to the landlord receiving an Order of Possession with an effective date of April 30, 2015.

With respect to the rent, both parties provided consistent testimony that the landlord had only received \$375.00 toward the rent due for March 2015 and that the landlord has not received any rent for the month of April 2015.

The tenant had submitted the landlord illegally increased the rent and failed to make repairs to the property or provide sufficient heat. As the tenants had not provided sufficient written submissions or evidence with respect to an illegal rent increase prior to

the proceeding and the tenant's verbal testimony concerning an illegal rent increase was vague as to when the increase commenced, I did not consider the matter of overpaid rent further. As the tenants had not filed their own Application to deal with repair issues or lack of heat, I did not give further consideration as to whether the tenants are entitled to compensation for those issues. Rather, the tenants were informed of their right to file their own Application to deal with such matters.

Analysis

Since the parties agreed to end the tenancy as of April 30, 2015 during the hearing, I found it unnecessary to determine whether both pages of a 10 Day Notice were served upon the tenants or when such service occurred. Therefore, based upon the mutual agreement reached between the parties during the hearing, I provide the landlord with an Order of Possession effective on April 30, 2015.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement unless the tenant has a legal right to withhold rent. Where a tenant overpays rent due to a rent increase that was not made in accordance with the rent increase provisions of the Act, a tenant may recover the overpayments by withholding rent.

In this case, I heard disputed testimony that a Notice of Rent Increase was served upon the tenants. In the absence of a copy of a Notice of Rent Increase in the landlord's evidence package I find I am unable to verify the landlord's position that the rent was legally increased. Therefore, I rely upon the undisputed testimony of both parties that the original tenancy agreement required the tenants to pay the landlord rent of \$750.00 per month. Therefore, based upon the evidence before me, I am satisfied the landlord was entitled to collect rent of \$750.00 each month and that the landlord is entitled to recover unpaid rent of \$375.00 for the month of March 2015. Since the tenants remain in possession of the rental unit and have not paid the landlord for this occupancy I find the landlord entitled to recover loss of rent in the amount of \$750.00 for the month of April 2015.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: March 2015	\$ 375.00
Loss of Rent: April 2015	750.00
Filing fee	50.00
Less: security deposit	<u>(375.00)</u>
Monetary Order	\$ 800.00

To enforce the Monetary Order it must be served upon the tenants and may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

As the parties were informed during the hearing, the tenants remain at liberty to file their Application in order to provide sufficient particulars and evidence if the remain of the position their rent was illegally increased and to seek compensation for the alleged lack of repairs and heat during the tenancy.

Conclusion

The landlord has been provided an Order of Possession effective April 30, 2015 based upon the mutual agreement reached during the hearing.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$800.00 to serve and enforce.

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: April 17, 2015

Residential Tenancy Branch

