



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNDC, MNSD

For the landlord – OPR, MNR, MNSD, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent and utilities; for an Order to cancel a One Month Notice to End Tenancy for Cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for a Monetary Order to recover the security deposit. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order permitting the landlord to keep all or part of the security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlords along with agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each

other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I will therefore deal with the tenant’s application to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities, the One Month Notice to End Tenancy for cause and the tenant’s application to recover the security deposit. I will not deal with the remaining section of the tenant’s claim at this hearing.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities?
- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?
- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on January 08, 2015 for a fixed term of three months. From April 01, 2015 the tenancy reverted to a month to month tenancy. Rent for this unit is \$1,300.00 per month plus 40 percent of utilities. Rent is due on the 3rd of each month. The tenant paid a security deposit of \$700.00 on January 08, 2015.

SA gave testimony on behalf of the landlords and testified that the tenant failed to pay rent for March, April, and May, 2015 to an amount of \$3,900.00. SA testified that the landlords had originally served the tenant with a 10 Day Notice on May 06, 2015; however, when the landlords engaged the services of SA as their agent, SA served the tenant with a new 10 Day Notice by registered mail on May 21, 2015. The new 10 Day Notice indicated that the outstanding rent is \$3,900.00 due on May 01, 2015.

SA testified that the tenant failed to pay the outstanding rent within five days and has also failed to pay rent for June, 2015. SA testified that the landlords are willing to forgo the rent for March, 2015 but seek to recover unpaid rent for April, May and June, 2015 to an amount of \$3,900.00.

SA testified that the tenant failed to pay utilities. A written demand for utilities was sent to the tenant. This indicated that the tenants 40 percent share for Hydro is owed of \$222.00 and the tenants 40 percent share for gas is \$240.00. SA testified that she is unsure if the landlords also included copies of the utilities bills with this demand letter.

DB gave testimony on behalf of the landlords and testified that he had spoken to the tenant and reached a verbal agreement that if the tenant vacated the unit at the end of May the landlords would not seek to recover the unpaid rent for April and May. However, as the tenant did not vacate the rental unit the verbal agreement is now void.

SA testified that the landlord seek an Order of Possession effective on June 30, 2015. The landlords also seek an Order permitting them to keep the security deposit of \$700.00 to apply to the unpaid rent and utilities. The landlords also seek to recover their \$50.00 filing fee from the tenant.

The tenant disputed the landlords' claim that she owed rent for March, 2015. The tenant testified that this was paid on March 02, 2015 to RD. The tenant agreed that she did not pay rent for April, May and June, 2015. The tenant testified that she had an agreement with the DB, who said she did not have to pay rent for April and May, 2015. The tenant referred to the first day 10 Day Notice which shows that the outstanding rent is \$1,300.00 for April and does not show an amount outstanding for March.

SA testified that the original 10 Day Notice only included the unpaid rent for April and it was a misunderstanding on the landlords' part. This Notice was withdrawn by the landlords and SA issued the new Notice on May 21, 2015

The tenant agreed that there are some outstanding utilities. The tenant testified that she has never been given a copy of any of the utility bills and is not required to pay utilities unless the landlords provide copies of the bills.

The tenant seeks an Order to cancel the 10 Day Notice to End Tenancy and the One Month Notice to End Tenancy. The tenant also seeks to recover the security deposit from the landlords.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

With regard to the landlords' claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed testimony before me that the tenant has failed to pay rent for April, May and June, 2015. The parties agreed that there was an initial verbal agreement in place that the tenant would have April and May as rent free months. The landlords' agent testified that this agreement was made if the tenant agreed to vacate the rental unit at the end of May. I am satisfied from the evidence before me that the tenant had agreed to vacate the rental unit at the end of May, 2015 in Order to receive two free months of rent. The tenant continued to reside in the rental unit past May 31, 2015 and this would have made the agreement null in void. Consequently, I find the landlords are entitled to recover rent for April, May and June to the amount of **\$3,900.00.**

With regard to the landlords' claim to recover unpaid utilities of \$462.00; I refer the parties to s.46 (6) of the *Act* which states:

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

The landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I am satisfied that the landlords have given the tenant a written demand for payment of the utilities as required under s. 46(6) of the *Act*; however, the landlord has not provide the tenant with copies of the utilities bills and has not provided them as evidence for this

hearing and did not include the amounts claimed on the 10 Day Notice to End Tenancy. This section of the landlords' claim is therefore dismissed with leave to reapply.

I Order the landlords to keep the security deposit of **\$700.00** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlords' monetary claim.

With regard to the landlords' application for an Order of Possession for unpaid rent or utilities; I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. Two Notices were served to the tenant in May, 2015. The Notices state that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The first Notice was served on May 06, 2015 in person. The tenant did apply to dispute this Notice. The second Notice was served by registered mail on May 21, 2015. The tenant testified that she did not receive this Notice; however, it is deemed to have been served five days later on May 26, 2015. The tenant did not dispute that the rent remains unpaid.

Based on the foregoing, I find that the landlords are entitled to an Order of Possession. The effective date on the second 10 Day Notice was June 05, 2015. As this date has since passed and the landlords have requested an Order of Possession effective on June 30, 2015, I hereby grant the landlords an Order of Possession pursuant to s. 55 of the *Act*.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

As an Order of Possession has been issued to the landlords based on the 10 Day Notice to End Tenancy I am not required to deal with the tenant's application to cancel the One Month Notice to End Tenancy for Cause as the tenancy ended on June 05, 2015 and the tenant must vacate the rental unit on June 30, 2015.

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,250.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on June 30, 2015. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlords' application for a Monetary Order for unpaid utilities is dismissed with leave to reapply.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

The reminder of the tenant's application is dismissed without leave to reapply.

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: June 23, 2015

Residential Tenancy Branch

