



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and called one witness who gave affirmed testimony. However, despite being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on May 13, 2015, no one for the tenant 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 tenant was served on that date and in that manner at the rental unit, which was witnessed by the landlord's spouse. The landlord's spouse also testified during the course of the hearing that the documents were served on that date and in that manner, and that the witness was present. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

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

During the course of the hearing the landlord applied to amend the application to include a monetary claim for unpaid rent, stating that it was the intention when the application was made, which is reflected in the application to keep the security deposit, and I amend the application accordingly.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the rental unit is one of 17 units in an apartment complex. This month-to-month tenancy started on November 24, 2011. Rent in the amount of \$520.00 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 tenant in the amount of \$260.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No written tenancy agreement was prepared.

The landlord further testified that the owner of the rental complex intends to demolish it and all tenants were given 4 months notice, and most tenants have moved out. The tenant was given a 2 Month Notice to End Tenancy for Landlord's Use of Property which was effective June 30, 2015. When the tenant received the notice, she refused to pay anymore rent and told the landlord that she would not be paying April's rent. As a result of the refusal, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on April 1, 2015. A copy of the notice has been provided and it is dated April 1, 2015 and contains an expected date of vacancy of April 11, 2015 for unpaid rent in the amount of \$520.00 that was due on April 1, 2015.

The tenant has not paid any rent for April, May or June, 2015, but moved out of the rental unit around the end of May, 2015. However, the tenant's daughter and son-in-law remain in the rental unit. The landlord seeks an Order of Possession for all occupants.

No rent has been received for 3 months, and the landlord forgives 1 month for compensation required by the *Act*, and applies for a monetary order for 2 months rent and to keep the \$260.00 security deposit in partial satisfaction.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

The landlord's witness testified that he is the spouse of the landlord, and was present when the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing at the rental unit on May 13, 2015.

The witness was also present on April 1, 2015 when the landlord personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities at the rental unit.

Analysis

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 that the tenancy ends on the effective date of the notice and must move out of the rental unit by that date.

In this case, the landlord testified that no rent has been paid since the issuance of the notice and the landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant has personally moved out of the rental unit, but I find that the tenant is still the tenant of the rental unit having left family in the rental unit. I find that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession on 2 days notice to the tenant and occupants.

I am also satisfied that the landlord is owed rent for the months of April and May, 2015, totalling \$1,040.00. It is now near the end of June, 2015, and I find that the tenant is entitled to the compensation required by the *Act* for this month.

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

I hereby order the landlord to keep the \$260.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$830.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant and occupants.

I further order the landlord to keep the \$260.00 security deposit in partial satisfaction of the claim for unpaid rent, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$830.00.

This order is 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: June 24, 2015

Residential Tenancy Branch

