



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sheringham Construction & Management Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, FF

Introduction

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

The named landlord attended the hearing and also represented the landlord company. The tenant also attended, although was 16 minutes late for the hearing, and the hearing had commenced in his absence.

The parties each gave affirmed testimony and were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late fees?

Background and Evidence

The landlord testified that this tenancy began on August 1, 2012 as a 1 year fixed term and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent was originally \$1,050.00 per month but was raised during the tenancy on more than one occasion and is currently \$1,125.00 per month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$525.00 as well as a pet damage deposit in the amount of \$525.00, both of which are still held in trust by the landlords.

A copy of the tenancy agreement has not been provided, nor have any notices of rent increases. The landlord testified that rent was raised \$25.00 per month on 3 occasions, in accordance with the *Act*, and notices were provided to the tenant. The landlord also testified that the tenant has been living in the rental unit for 3 years and there have been 2 rent increases.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$6,400.00 to the end of August, 2015. The tenant paid \$350.00 in March, leaving \$775.00 outstanding and has not paid any rent since.

The landlord also testified that the tenancy agreement provides for late fees of \$25.00 per month.

The landlord served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but a copy has not been provided. The landlord testified that it was dated March 28, 2015 and contained an expected date of vacancy of April 8, 2015 for unpaid rent of \$775.00, but was not able to explain what exactly the notice stated.

The tenant testified that the landlords have overcharged for late fees. Rent is \$1,050.00 per month due on the 1st day of each month, and the tenant has been paying an additional \$75.00 for late fees for 3 years and an additional \$50.00 per month for a pet.

The tenant denies ever being served with a notice of rent increase.

Analysis

Where a landlord applies for an Order of Possession, the onus is on the landlord to establish that a notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*. In this case, the landlords have not provided me with a copy of the notice to end the tenancy and the landlord was not able to explain what the notice given to the

tenant stated with respect to the amount of rent payable or owing. The tenant denies that rent is \$1,125.00 per month. Where it boils down to one person's word over another, and in the absence of any evidence to support the landlords' claims, I cannot be satisfied how much the tenant owes for rent, or even how much security deposit, late fees, or pet damage deposit have been paid or are owed.

The landlords' application is hereby dismissed without leave to reapply. The parties are encouraged to speak to one another and settle the dispute, failing which the landlord is at liberty to serve another notice to end the tenancy. However, the landlords must be prepared to prove the claims by providing the necessary evidentiary material to the Residential Tenancy Branch and to the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: August 04, 2015

Residential Tenancy Branch

