



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and more time to make her Application. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent and a bank fee; and, authorization to retain the 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.

Preliminary and Procedural Matters

The landlords had filed amended applications with the last one being mailed to the tenant on August 5, 2015 and the tenant acknowledged receiving it on August 10, 2015. The tenant also received the most recent submission from the landlord in her mailbox on August 11, 2015. The tenant indicated that she had wanted to gather evidence in response but that there was insufficient time to do so. I informed the parties that I would give the tenant the full opportunity to provide oral testimony during the hearing and if there was documentation or evidence that was critical to her position she may bring it to my attention and I would consider allowing it to be submitted after the teleconference call. During the hearing the tenant did not refer to any specific document or piece of evidence that would have a material impact upon the outcome of this hearing and I did not authorize any further submissions after the teleconference call ended.

The tenant acknowledged receiving the 1 Month Notice to End Tenancy for Cause on June 1, 2015. She filed to dispute it on June 22, 2015. The tenant was asked to provide reasons as to why she waited so long to file to dispute the Notice. The tenant stated she did not have any reasons other than she had hoped things would work out and that she really just needed more time to move out.

The Act provides that a tenant who receives a 1 Month Notice has 10 days to file to dispute the Notice. The Act provides that an extension of time may be granted in "exceptional circumstances". The tenant in this case filed well after 10 days and did not provide any exceptional circumstances that would permit me to grant an extension of time for her to dispute the 1 Month Notice. Therefore, I dismissed her Application and I considered the 1 Month Notice to be undisputed.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to recover unpaid and/or loss of rent and a bank fee from the tenant?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 1, 2014 and the tenant paid a security deposit of \$550.00. The tenant was required to pay monthly rent of \$1,100.00 by way of two instalments: \$550.00 on the 1st and \$550.00 on the 15th day of every month. The tenant had verbally requested permission to pay the rent on the 6th and 21th of the month and she had provided rent cheques to the landlords with those dates.

On June 1, 2015 the landlords personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) with a stated effective date of July 1, 2015. The tenant put a stop payment on the rent cheques dated June 6 and June 21, 2015. The tenant filed to dispute the 1 Month Notice on June 22, 2015 and that Application was dismissed as explained previously in this decision.

The tenant made the following payments for June and July 2015 rent: July 6, 2015 she paid \$557.50 which included reimbursement of \$7.50 in bank fees the landlords incurred due to one of the stop-payments; July 10, 2015 the tenant paid \$550.00 and on July 28, 2015 the tenant paid \$550.00. No other payments were received after July 28, 2015.

The landlords submitted that two 10 Day Notices were issued: July 6, 2015 and July 15, 2015 with the most recent one being posted on the tenant's door on July 16, 2015. The tenant did not file to dispute the 10 Day Notices. The landlords have applied to enforce the 10 Day Notice issued on July 15, 2015 which has a stated effective date of July 25, 2015.

The tenant continues to reside in the rental unit. The tenant stated that she has been looking for other accommodation and requested that she be permitted occupancy until next weekend. The landlords were willing to permit the tenant occupancy until August 31, 2015 and requested an Order of Possession effective that date.

The landlords also requested recovery of three \$550.00 payments they have not received for the June through August 2015, which amounts to \$1,650.00, plus \$7.50 for one of the bank fees they incurred as a result of the two stop payments the tenant placed on the rent cheques for June 2015. The landlords seek to retain the security deposit from the tenant in partial satisfaction of the unpaid rent. The tenant agreed that she owed the landlords the rent and bank fee in the amounts they have requested and she stated that she understood the landlords would retain her security deposit in partial satisfaction of the unpaid rent.

Analysis

Under the Act, a tenant in receipt of a Notice to End Tenancy has a certain amount of time to file to dispute the Notice, depending on the type of Notice to End Tenancy issued. As explained previously, a tenant has 10 days to dispute a 1 Month Notice. A tenant has five days to dispute a 10 Day Notice. If a tenant does not file to dispute the Notice to End Tenancy within the time permitted, the Act provides the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant must vacate the rental unit by the effective date of the Notice to End Tenancy.

In this case, the tenant did not file to dispute any of the Notices that are before me within the time limit for doing so. The 1 Month Notice has an incorrect effective date; however, an incorrect effective date does not invalidate the Notice. Rather, the Act provides that an effective date automatically changes to comply with the Act.

As of the date of this hearing, the effective dates of both Notices to End Tenancy that are before me, as corrected to comply with the Act, have since passed and I find the tenancy has ended and the landlords are entitled to regain possession of the rental unit. Therefore, I grant the landlord's request for an Order of Possession effective August 31, 2015 as they requested.

Based upon the undisputed submissions before me, I am satisfied the landlords have suffered a loss of three payments of \$550.00 during the months of June through August 2015; that the tenant has had the benefit of occupying the rental unit during such time; therefore, I find the landlords are entitled to an award of \$1,650.00 for unpaid and/or loss of rent as requested.

The Residential Tenancy Regulations also provide that a landlord may recover from the tenant any bank fees they incur if the tenant's cheque is dishonoured. I was provided undisputed evidence that the landlords are entitled to recover \$7.50 from the tenant for one of the cheques she put a stop-payment on that was not previously reimbursed by the tenant. Therefore, I award the landlords \$7.50 as requested.

As the landlords were successful in their Application, I further award the landlords recovery of the \$50.00 filing fee they paid for their Application.

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords by way of this decision.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Unpaid and/or loss of rent: June – August 2015	\$1,650.00
Bank fee for stop-payment on rent cheque	7.50
Filing fee	50.00
Less: security deposit	<u>(550.00)</u>
Monetary Order	\$1,157.50

Conclusion

The tenant's application has been dismissed.

The landlords have been provided an Order of Possession effective at 1:00 p.m. on August 31, 2015.

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$1,157.50 to serve and enforce as necessary.

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 20, 2015

