



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and 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 tenants for the cost of the application.

The hearing was originally scheduled to be heard on September 16, 2015 and was adjourned to today's date at the request of the landlord and with the consent of the tenant, and my Interim Decision was provided to the parties.

An agent for the landlord company and one of the 2 named tenants attended the hearing on both scheduled dates, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

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 tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on August 15, 2013 and reverted to a month-to-month tenancy after December 31, 2013, and the tenants still reside in the rental unit. Rent in the amount of \$825.00 per month was originally payable under the tenancy agreement but was raised to \$840.00 per month effective November, 2014. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$412.50 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenants fell into arrears of rent in July, 2015 and the landlord's agent personally served to one of the named tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 2, 2015. A copy of the notice has been provided and it is dated July 2, 2015 and contains an expected date of vacancy of July 12, 2015 for unpaid rent in the amount of \$320.00 that was due on July 1, 2015. The tenants have not paid any rent since the issuance of the notice, however the landlord testified that the tenants are currently in arrears the sum of \$200.00 for July as well as \$840.00 for each of the months of August and September, 2015.

The tenants have not served the landlord with an application for dispute resolution disputing the notice and the landlord seeks an Order of Possession and a monetary order for July to the end of September of \$1,880.00.

The landlord's agent also testified that it is not known what condition the rental unit is in or if it will require painting. The landlord seeks monetary compensation for loss of rental revenue for October, 2015 in the amount of \$840.00. A move-in condition inspection report was completed at the beginning of the tenancy.

The tenant testified that the parties had conversations wherein the tenant agreed to move out by October 9, 2015 and the landlord's agent said that was up to the tenants.

The tenant agrees that \$200.00 is owed for July, and the tenants do not have the money to pay the arrears, but were served with the Landlord's Application for Dispute Resolution before the tenants had the opportunity to file a dispute. Rather than make any more payments or file a dispute, the tenants decided to wait for this hearing.

The tenants hope the landlord will give the tenants time to pay the rent.

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 must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in

that notice. In this case, the tenants did not pay the rent and did not dispute the notice, and have not moved out of the rental unit by the effective date of July 12, 2015 as stated in the notice. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession on 2 days notice to the tenants.

With respect to the monetary claim for unpaid rent, the tenant does not dispute that no rent has been paid for August or September, 2015 or that the tenants owe the landlord \$200.00 for July, and I therefore grant that monetary order to the landlord.

With respect to the landlord's claim for loss of rental revenue, I am not satisfied that the landlord has established that the rental unit won't be re-rented for October 1, 2015. Perhaps the rental unit needs painting, however I have no evidence to satisfy me of that or of whether or not the rental unit needed painting at the beginning or during the tenancy. The landlord is required to ensure that the move-out condition inspection report is completed, and if there are damages or loss of rental revenue as a result, the landlord is at liberty to make that application once the tenancy has ended.

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

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 tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,930.00.

These orders are 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: September 22, 2015

Residential Tenancy Branch

