



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlord and one of the named tenants attended the hearing, representing both tenants. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the testimony and evidentiary material provided by the landlord, all of which has been reviewed and is considered in this Decision. No evidentiary material has been provided by the tenants and 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 bailiff fees and filing fees and loss of rental revenue?

Background and Evidence

The landlord testified that this tenancy began on September 1, 2014 and the tenants still reside in the rental unit. The tenancy was to be for a fixed term of 22 months, but the tenants did not return a signed tenancy agreement to the landlord. Rent in the amount of \$1,800.00 per month is payable on the 1st day of each month. The landlord collected a security deposit from the tenants in the amount of \$900.00 in October, 2014, however the tenants' cheque bounced and the landlord did not collect any further deposits from the tenants.

The landlord further testified that the parties had been to a dispute resolution hearing on April 23, 2015 and the landlord was successful in obtaining an Order of Possession, however a bailiff was hired and the tenant paid the outstanding rental arrears, and since the tenants had children, the landlord allowed the tenants to stay.

The tenant started to pay rent by taking it to the landlord's cousin's house, whom lives close to the rental unit. The tenants continued to accumulate arrears, having only paid \$1,400.00 for the month of June, 2015 and have not paid any rent since, now owing \$7,600.00. On July 21, 2015 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated July 21, 2015 and contains an effective date of vacancy of July 31, 2015 for unpaid rent in the amount of \$3,615.00 that was due on July 1, 2015, and the landlord testified that the amount written in the notice included other fees.

The landlord claims \$400.00 for June's rent; \$1,800.00 for July's rent; filing fees of \$350.00 including the unpaid filing fee order from the hearing in April, 2015; \$1,065.00 for costs to hire an eviction service; \$5,400.00 for unpaid rent for August through October, 2015; for a total of \$9,015.00. The landlord also seeks loss of rental revenue because it is not known when the landlord will be able to re-rent the unit.

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

The tenant testified that he paid rent in cash to the landlord's cousin, and paid \$1,600.00 on October 1, 2015. The tenant agrees that the landlord is owed \$400.00 for June, but only owes \$400.00 for July, \$400.00 for August, \$400.00 for September and \$200.00 for October, 2015, for a total of \$1,800.00. No receipts were issued.

Analysis

The *Residential Tenancy Act* states that a tenant has 5 days from the date of service of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to pay the rent in full or

dispute the notice by filing an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant has not disputed the notice and agrees that he didn't pay the rent in full, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*, and since the effective date of vacancy has passed, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenants.

With respect to the monetary claims, I have reviewed the Decision of the director from the April, 2015 hearing to ensure that any orders made are not re-claimed in this hearing. The Arbitrator awarded the \$100.00 filing fee from that dispute, and therefore, the landlord may not re-claim that amount in this hearing. However, since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee for the cost of this application.

A landlord may not claim costs associated with bailiff services or eviction services, and I deny those claims.

I am not satisfied that the landlord has established that the rental unit will not be re-rented in a reasonable amount of time, or that the landlord won't be able to re-rent by November 15, 2015. Therefore, I deny the landlord's claim for loss of rental revenue.

With respect to the landlord's claim for unpaid rent, a landlord must give a receipt for all payments accepted in cash. In this case, neither party has provided any evidence with respect to what has been paid or not. The tenant has no receipts, and testified that he continued to make cash payments to the landlord's cousin in spite of that. The landlord's cousin did not attend the hearing to give any testimony. The landlord has not kept a ledger of payments due and received. The tenant agrees that the landlord is owed \$1,800.00 and the landlord claims \$7,600.00. Where it boils down to one person's word over another, the claim has not been proven. In the circumstances, I am satisfied that the landlord has established a monetary claim for \$1,800.00.

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 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 \$1,900.00.

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: October 22, 2015

Residential Tenancy Branch

