



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Treaty Developments c/o Rockwell Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF
CNR, OLC, RR, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied 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; 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 tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

An agent for the landlord company attended the hearing, provided evidentiary material in advance of the hearing and gave affirmed testimony. However, despite being served with the Landlord Application for Dispute Resolution and notice of this hearing, and despite making an application for dispute resolution that was joined to be heard with the landlord's application, 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's agent. The landlord has provided evidence of serving the landlord's hearing package upon the tenant by registered mail on September 21, 2015 and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Since the tenant has not attended the hearing, I hereby dismiss the tenant's application without leave to reapply.

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

Issue(s) to be Decided

The issues remaining to be decided are:

- 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?
- Has the landlord 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?
- 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's agent testified that this fixed-term tenancy began on July 15, 2015 and expires on June 30, 2016, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$950.00 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 \$475.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 18 units. A copy of the tenancy agreement has not been provided.

The landlord's agent further testified that the tenant paid half a month's rent for the commencement of the tenancy, but failed to pay any rent after that. The landlord has only collected \$475.00 for July and the security deposit.

The landlord's agents served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 9, 2015 by posting it to the door of the rental unit. A copy of the first page of the notice has been provided, and it is dated September 9, 2015 and contains an effective date of vacancy of September 19, 2015 for \$1,900.00 of unpaid rent that was due on September 1, 2015. A copy of a Proof of Service document has also been provided which is signed by an agent of the landlord and a witness. The landlord was given the opportunity to provide by facsimile after the hearing concluded a copy of the entire notice that was given to the tenant. The landlord's agent pointed out that a staple appears in the copy that was given to the Residential Tenancy Branch as evidence, and that staple held both pages of the 2-page form that was posted to the tenant's door.

The tenant has not paid any rent for August, September, October or November, 2015 and the landlord seeks an Order of Possession and a monetary order for \$3,800.00 in unpaid rent, late fees, and an order permitting the landlord to keep the security deposit in partial satisfaction of that claim.

Analysis

I have received the landlord's facsimile which contains both pages of the same form that was provided prior to the hearing, and in the absence of any evidence to the contrary, and having heard the testimony of the landlord's agent, I am satisfied that the tenant was deemed served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities 3 days after posting it to the door of the rental unit, or September 12, 2015. Although the tenant filed a dispute, the tenant did not attend the hearing, and I find that the tenant has not paid the rent and is considered to have not disputed the notice, and I find that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession.

The notice is consistent with the testimony of the landlord's agent, being that the tenant failed to pay 2 months of rent, August and September, which totalled \$1,900.00. The landlord's agent also testified that the tenant has not paid any rent since the notice was issued. I accept that testimony, and therefore, I also find that the landlord has established a claim for unpaid rent in the amount of \$3,800.00.

The landlord has not provided a copy of the tenancy agreement, and the *Act* specifies that late fees of no more than \$25.00 may be applied if it's contained in the tenancy agreement. There is no evidence of that, and I dismiss the landlord's application for late fees.

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

I hereby order the landlord to keep the \$475.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord in the amount of \$3,375.00.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$475.00 security deposit 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 \$3,375.00.

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: November 17, 2015

Residential Tenancy Branch

