



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD
 CNR, MNDC, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit. The tenant has applied as against one of the named landlords for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and one of the named landlords attended the hearing. At the commencement of the hearing the tenant advised that not all of the landlords' evidentiary material reached the tenant because it was not addressed to the tenant properly. The landlord has received all of the tenant's evidentiary material.

During the course of the hearing it was determined that the tenant's application for monetary compensation is not sufficiently related to the primary matter before me, being the notice to end the tenancy, and I severed the tenant's application for monetary compensation. The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply, and I have made no findings of fact or law with respect to the merits of that matter.

The parties each gave affirmed testimony and were given the opportunity to question each other. This Decision is based on the evidentiary material provided by the tenant and the testimony of the parties.

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

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

- Should the notice to end the tenancy for unpaid rent be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 per month is payable on the 1st day of each month. The landlord collected a security deposit in the amount of \$550.00 at the commencement of the tenancy, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the upper level of a house and the lower level is also rental property, which is currently vacant. The landlords do not reside on the rental property.

The landlord further testified that the tenant failed to pay rent when it was due in September, 2015, having only paid \$540.00, and no rent was paid for October, 2015. On October 2, 2015 the landlord personally served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) but the tenant threw it back at the landlord. The landlord had a neighbour witness the landlord wedging the notice into the door of the rental unit the same day, and when the landlord left, the tenant had the notice in her hand. A copy of the first page of the notice has been provided by the tenant and it is dated October 2, 2015 and contains an effective date of vacancy of October 15, 2015 for \$1,660.00 of unpaid rent that was due on October 1, 2015. The tenant has not paid any rent since the issuance of the notice and is now in arrears the sum of \$3,860.00 for September, October, November and December, 2015.

The landlord believed the tenant would have moved out of the rental unit prior to December 1, 2015 and found a new tenant, who is now staying in temporary housing until this unit becomes vacant.

The tenant testified that rent was withheld because the tenant gave the landlord more than enough time to fix things. The landlord offered in a text message to pay the tenant \$1,700.00, the amount owed for rent, if the tenant moved out by November 1, 2015.

The tenant was not aware that the *Act* requires a tenant to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement and agrees that no rent was paid for October, November or December, 2015 and that only a portion was paid for September, 2015.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that the notice was given in accordance with the *Residential Tenancy Act*.

I have reviewed the notice and find that it is in the approved form and it contains information required by the *Act*. I also accept the landlord's testimony that both pages of the 2-page form were served.

Although the tenant may have a valid claim against the landlord, and that matter being severed and dismissed with leave to reapply, I make no findings nor have I heard any testimony relating to the tenant's claim. However, the *Act* also states that:

Rules about payment and non-payment of rent

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me that the tenant had a right under the *Act* to deduct all or a portion of the rent, and I find that the tenant simply didn't pay any rent at all for October or November or December, 2015. The tenant didn't dispute that and also agrees that only a portion of the rent for September, 2015 was paid to the landlord. Therefore, I find that the landlords are entitled to an Order of Possession, and the tenant's application to cancel the notice is dismissed. Since the effective date of vacancy contained in the notice has already passed, the landlords are entitled to the Order of Possession on 2 days notice to the tenant.

With respect to the landlords' monetary claim for unpaid rent, the tenant does not dispute the amounts claimed, and I find that the landlords have established a monetary claim for September, 2015 in the amount of \$560.00; for October, 2015 in the amount of \$1,100.00; and for November, 2015 in the amount of \$1,100.00. The landlord testified that new tenants are staying in temporary housing and ready to move into the rental unit, and therefore, I am satisfied that the landlords will be owed half a month's rent for December, 2015 in the amount of \$550.00.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlords to keep the \$550.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenant for the difference in the amount of \$2,810.00.

DESCRIPTION	AMOUNT DUE TO LANDLORD	BALANCE
September, 2015	\$560.00	\$560.00
October, 2015	\$1,100.00	\$1,660.00

November, 2015	\$1,100.00	\$2,760.00
December 2015	\$550.00	\$3,310.00
Filing Fee	\$50.00	\$3,360.00
Less: Security Deposit	-\$550.00	\$2,810.00

Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

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

I further order the landlords to keep the \$550.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,810.00.

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: December 11, 2015

Residential Tenancy Branch

