



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and cause; and, a Monetary Order for unpaid rent. One of the two named tenants appeared at the hearing. The landlord testified that hearing packages were sent to each named tenant at the rental unit and that both packages were delivered. The tenant in attendance confirmed that the landlords had notified her of this proceeding by registered mail. The tenant also indicated that she had a signed statement of the co-tenant and that their son witnessed the male tenant sign the document. I accepted the landlord's undisputed testimony that both named tenants were notified of this proceeding by registered mail and I considered the female tenant to be representing both named tenants. Accordingly, I permitted the female tenant to read the statement of the male tenant into evidence.

Procedural Matters

During the hearing, the tenant argued that she had ended the tenancy effective August 1, 2015 and that she has not resided in the rental unit since then although the tenant acknowledged that she frequently visits to co-tenant, her ex-husband, at the rental unit. The tenant confirmed that she had no objection to the landlord obtaining an Order of Possession and that her only concern was being held responsible for the unpaid rent, if any. While the landlord disagreed with the tenant's submissions that she ended the tenancy and expressed reservation that the female tenant no longer resides at the rental unit; the landlord agreed to withdraw their monetary claim against the female tenant. Accordingly, the Monetary Order issued with this decision names the male tenant only.

The landlord transposed the male tenant's middle and last names on the Application. The application was amended accordingly with consent.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent or cause?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

Pursuant to a verbal agreement, the co-tenancy commenced October 1, 2014 on a month-to-month basis in exchange for rent in the sum of \$1,350.00 payable on the first day of every month.

The landlord testified that a security deposit was not paid. The tenant testified that partial payments of \$420.00, \$55.00, and \$200.00 were made to the landlord for a security deposit. Since the landlord had not requested authorization to retain a deposit, the issue of a security deposit was not before me and I did not explore this discrepancy further.

The landlord testified that the last month for which rent was received was July 2015. The female tenant confirmed that the last month she paid rent was July 2015 and that she had a receipt from the landlord to show rent was paid for July 2015.

The tenant submitted that she gave a letter to the female landlord and the landlord's daughter on July 28, 2015 indicating she was ending the tenancy effective August 1, 2015. The landlord and landlord's daughter denied receiving such a letter. Rather, the landlord signed a reference letter for the female tenant. Despite this disputed testimony, it was undisputed that vacant possession of the rental unit and the keys to the rental unit have not yet been returned to the landlord as is required when a tenancy ends.

The landlord testified that a 1 Month Notice to End Tenancy for Cause was posted on the rental unit door on September 30, 2015 with a stated effective date of October 30, 2015. The tenants did not file to dispute the 1 Month Notice.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the rental unit door on October 21, 2015 indicating rent of \$4,050.00 was outstanding as of October 1, 2015 and a stated effective date of October 31, 2015. The tenants did not file to dispute the 10 Day Notice.

The female tenant read from the statement purportedly written by the male tenant. In the letter, the male tenant indicates that he satisfied rent by giving the landlord a piece

of machinery with a value of \$3,000.00 and various cash payments. The female tenant also stated that she witnessed some of the cash payments. The landlord denied receiving machinery from the male tenant or any payments after July 2015.

The landlords submitted that as of the date of the hearing, the landlords have suffered a loss of rent for six months for a total of \$8,100.00; however, they limited their claim to \$5,000.00 in filing this application to avoid that additional filing fee for claims over \$5,000.00.

Documentary evidence provided for my consideration were copies of the 10 Day Notice; the 1 Month Notice; signed and witnessed Proof of Service for each of the Notices to End Tenancy; and, letters from the City dated August 18, 2015 and September 17, 2015 indicating the property was being kept in an unsightly manner and the illegal parking an overweight vehicle on the property.

Analysis

Where a tenant is served with a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant must vacate the rental unit by that date under section 47(5) of the Act. In this case, I was provided undisputed evidence that a 1 Month Notice was posted on the door of the rental unit on September 30, 2015. Pursuant to section 90 of the Act, a tenant is deemed to have received a Notice posted on the door three days later. Therefore, I find the tenant(s) were deemed to be served with the 1 Month Notice on October 3, 2015.

Since the tenant(s) were deemed to have been served with the 1 Month Notice on October 3, 2015 the effective date automatically changes to read November 30, 2015 under section 53. Therefore, I find the tenant(s) were required to vacate the rental unit no later than November 30, 2015 pursuant to the undisputed 1 Month Notice. Since that date has since passed, I find the landlords entitled to an Order of Possession. Provided to the landlords is an Order of Possession effective two (2) days after service.

Having found the tenancy at an end pursuant to the 1 Month Notice and the landlords entitled to an Order of Possession for the reasons provided above, I find it unnecessary to further consider whether the tenancy ended pursuant to the 10 day Notice that was issued by the landlords.

With respect to the landlord's request to recover unpaid and/or loss of rent in the amount of \$5,000.00 I find I am satisfied the landlords have suffered a loss of at least that amount as I reject the tenant's disputed submissions that all or a part of the rent was satisfied in the absence of sufficient particulars and evidence. I found the tenant's disputed submission that rent was satisfied in part by transfer of a piece of machinery unsupported by any documentation to establish that a transfer took place, such as a transfer form or a bill of sale or other corroborating evidence; or, evidence to show the alleged value of the machinery. I found the tenant's disputed submission that various cash payments were made to the landlord unsupported considering the tenant's submission was void of particulars such as the date paid, the amount paid, the person the payment was made to; and, I noted that a rent receipt had been given to the tenant in the past for the payment of July 2015 rent. Therefore, I provide the landlord with a Monetary Order for unpaid and/or loss of rent in the amount of \$5,000.00 as requested, plus recovery of the \$50.00 filing fee they paid for this application.

I have made no finding as to whether a security deposit was paid in this decision. If one was paid, as alleged by the tenant, it remains in trust to be administered in accordance with the Act.

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service.

The landlords have been provided a Monetary Order in the sum of \$5,050.00 to serve and enforce upon the male tenant.

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: January 12, 2016

Residential Tenancy Branch

