



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, O, FF

Introduction

This is an application brought by the Landlord(s) requesting an Order of Possession based on a Notice to End Tenancy that was given by the tenant, requesting a Monetary Order for outstanding rent, and requesting recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

Issue(s) to be Decided

The issues are whether or not the landlord has the right to an Order of Possession, whether or not the landlord has established monetary claim for outstanding rent, and whether to Order recovery of the filing fee.

Background and Evidence

The landlord testified that on September 15, 2015 the tenant signed a Notice to End the Tenancy on the 31st day of October 2015.

The landlord further testified that, since the tenant had stated she was vacating, he signed a new tenancy agreement with a new tenant, for a tenancy beginning November 1, 2015 at a monthly rent of \$800.00.

The landlord further testified that the respondent failed to vacate the rental unit at the end of October and as a result he has had to return the new tenants money that was paid for rent and security deposit.

Landlord further testified that the tenant continues to reside in the rental unit and although she has paid some money towards the rent, which was accepted for use and occupancy only, she has not paid the full amount. The total amount the tenant has paid is as follows:

November 2015 rent paid	\$600.00
December 2015 rent paid	\$700.00
January 2016 rent paid	\$0.00
Total	\$1300.00

The landlord is requesting a Monetary Order for the outstanding rent at the \$800.00 per month amount that he would have collected from the new tenant.

The landlord is therefore requesting an Order as follows:

November 2015 rent outstanding	\$200.00
December 2015 rent outstanding	\$100.00
January 2016 rent outstanding	\$800.00
Filing fee	\$50.00
Total	\$1150.00

The tenant testified that she did sign a Notice to End Tenancy stating she would be vacating the rental unit on October 31, 2015, however she was unable to find a place to move to, and therefore did not move.

The tenant further testified that although there is some rent outstanding, she has paid more rent than the landlord is claiming. The tenant claims to have paid the following amounts:

November 2015 rent	\$700.00
December 2015 rent	\$700.00
January 2016 rent	\$400.00
Total	\$1800.00

The tenant therefore argues that the only rent outstanding is \$300.00 for the month of January 2015, and stated that she told the landlord's she would pay that amount when the landlord issued her a receipt for all the rent she has paid.

The tenant further argues that she should not have to pay \$800.00 per month, because her tenancy agreement is for \$700.00 per month and that is what she has been paying.

In response to the tenants testimony the landlord testified that the tenant has not paid \$700 for November 2015, she has only paid \$600.00 and has been given receipts for those amounts.

The landlord further testified that the tenant has not paid any rent for the month of January 2016 and in fact stated she was refusing to pay any rent because they're arbitration hearing was coming.

Analysis

It is my finding that the tenant is liable for any lost rental revenue that resulted from her breaching her agreement to vacate the rental unit on October 31, 2015. The landlord has provided proof that the unit was re-rented to a new tenant for November 1, 2015 at a monthly rent of \$800.00, and therefore it's my finding that the tenant is liable for that full amount until she vacates a rental unit.

It is also my finding that the landlord has shown that the tenant has only paid the following amount of rent for the months of November 2015 through January 2016:

November 2015 rent paid	\$600.00
December 2015 rent paid	\$700.00
January 2016 rent paid	\$0.00
Total	\$1300.00

The tenant claims to have paid more rent; however she has provided no evidence in support of that claim.

I therefore allow the landlords request for a Monetary Order as follows:

November 2015 rent outstanding	\$200.00
December 2015 rent outstanding	\$100.00
January 2016 rent outstanding	\$800.00
Filing fee	\$50.00
Total	\$1150.00

I have allowed the full January 2016 rent as I find it unlikely that the landlord will be able to re-rent the unit before the end of January, however should the landlord collect any

rent for the month of January 2015 the amount collected must be deducted off the amount Ordered.

Further, since the tenant signed a valid Notice to End Tenancy and has failed to vacate the rental unit I also allow the landlords request for an Order of Possession.

Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenant.

I have issued a Monetary Order in the amount of \$1150.00.

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 07, 2016

Residential Tenancy Branch

