



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF
CNR, MNDC, RR

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; for an order permitting the landlords 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlords attended the hearing, one of whom acted as agent for the landlords and gave affirmed testimony. However, despite making an application for dispute resolution, 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 participants who joined the call were the landlords. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on December 16, 2015 and was permitted to send by facsimile proof of mailing after the hearing concluded. I have received that evidence, being a copy of a cash register receipt issued by Canada Post bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the tenant has not served the landlords with the Tenant's Application for Dispute Resolution, and learned about the tenant's application when the landlord attended the Residential Tenancy Branch to file the landlords' application.

The tenant did not attend the hearing and the landlords attended, prepared to deal with the tenant's application. Therefore, I dismiss the tenant's application without leave to reapply.

All testimony and the evidence of the landlord is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- 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 pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2010 and the tenant still lives in the rental unit. The tenant was already a tenant when the landlord purchased the rental property in or around March, 2013. A copy of the tenancy agreement has been provided. Rent in the amount of \$675.00 per month is payable on the 1st day of each month. At the outset of the tenancy the tenant paid a security deposit in the amount of \$337.50 as well as a pet damage deposit in the amount of \$337.50, both of which are currently held in trust by the landlords. The rental unit is an apartment in a townhouse type of complex with 9 units.

The tenant failed to pay rent when it was due in November, 2015 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to a man who was at the rental unit and who refused to identify himself. The landlord testified that the man has been there for a few months. A copy of the first page of the notice has been provided and it is dated November 2, 2015 and contains an effective date of vacancy of November 12, 2015 for unpaid rent in the amount of \$700.00 that was due on November 1, 2015.

The tenant has not paid any rent since the issuance of the notice and is now in arrears for November and December, 2015 and January, 2016, totalling \$2,025.00. The landlords have not been served with an application for dispute resolution by the tenant disputing the notice.

Analysis

The *Residential Tenancy Act* states that once a tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord testified that the tenant was served with the notice on November 2, 2015 by personally handing it to an adult who apparently resides in the rental unit, and I accept that testimony. The tenant disputed the notice by filing an application for dispute resolution on November 6, 2015, clearly within the 5 days. However, the tenant failed to attend the hearing, and having dismissed the tenant's application, I also find that the effect of failing to appear at the hearing is that the notice is treated as not disputed. Further, the *Act* provides that if a tenant's application to cancel a notice to end the tenancy is dismissed, and the landlord orally requests an Order of Possession, I must grant the order. In the circumstances, I find that the tenant is conclusively presumed to have accepted the end of the

tenancy and the landlords are entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect the landlords' monetary claim for unpaid rent, I accept the testimony of the landlord that the tenant has not paid any rent for November or December, 2015 and has not paid any rent for the month of January, 2016. In the absence of any evidence to the contrary, I accept that testimony and I find that the landlords have established a monetary claim in the amount of \$2,025.00.

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

The *Residential Tenancy Act* also permits me to set off amounts owed by one party to another. In the circumstances, I find that the landlords ought to keep the \$337.50 security deposit and the \$337.50 pet damage deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference in the amount of \$1,400.00 ($\$2,025.00 + \$50.00 - \$337.50 - \$337.50 = \$1,400.00$).

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 landlords on 2 days notice to the tenant.

I further order the landlords to keep the \$337.50 security deposit and the \$337.50 pet damage deposit in partial satisfaction of the claim 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 \$1,400.00.

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: January 13, 2016

Residential Tenancy Branch