



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIDD HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MND MNR MNSD MNDC ET FF – Landlord's application
CNR RP – Tenant's application

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of both the Landlord's and the Tenant's application I have determined that I will not deal with all the dispute issues each party has placed on their application. For disputes to be combined on an application they must be related.

Not all the claims on the Landlord's and Tenant's applications are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Landlord's requests for an Order of Possession for unpaid rent and their monetary request for unpaid rent or utilities and to recover the cost of the filing fee. I will also deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for unpaid rent.

Introduction

This hearing was scheduled to hear matters pertaining to cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on January 13, 2016 seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on January 11, 2016 seeking an Order to cancel the 10 Day Notice to end tenancy.

The hearing was conducted via teleconference and was attended by the Landlord and the Landlord's Agent (the Agent) who conducted service of documents. The Landlord and Agent provided affirmed testimony. No one was in attendance on behalf of the Tenant.

The Landlord confirmed receipt of the Tenant's application and notice of hearing documents.

The Agent testified he personally serves the Tenant with copies of the Landlord's application, notice of hearing documents, and evidence package on January 19, 2016 in the presence of a witness.

Based on the submissions of the Landlord and Agent I find the Tenant was sufficiently served notice of this proceeding. Despite this teleconference hearing being scheduled to hear the Tenant's application as well as the Landlord's application, no one was in attendance on behalf of the Tenant. Accordingly, I proceeded in the absence of the Tenant to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month written tenancy agreement that began on October 1, 2015. Rent of \$1,050.00 was payable on or before the last day of each month. The Tenant paid a total of \$525.00 as the security deposit on or before October 1, 2015.

The Landlord testified that when the Tenant failed to pay the January 1, 2016 rent the Agent posted a 10 Day Notice to the Tenant's door on January 2, 2016. The Tenant continues to reside in the rental unit and has not made a payment towards rent for January, February or March 2016.

The Landlord seeks an Order of Possession for as soon as possible and a Monetary Order for all of the outstanding rent.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for 18 minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by posting it to the door, is deemed to be received on the 3rd day after it was mailed.

The Tenant filed an application to cancel the Notice on January 11, 2016 and wrote on her application that she received the 10 Day Notice on January 12, 2016, which would be the day after she filed to dispute the Notice. Based on the foregoing, and in absence of proof of the actual date the Notice was received by the Tenant, I find the Tenant was deemed to have received the 10 Day Notice on January 5, 2016, three days after it was posted to the door, pursuant to section 90 of the *Act*. Therefore, the effective date of the Notice is **January 15, 2016**.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In absence of the Tenant I accepted the Landlord's undisputed evidence that the Tenant had no legal right to withhold the payment of rent. Therefore, I conclude this tenancy ended on the effective date of the Notice, **January 15, 2016**, pursuant to section 46 of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord claimed unpaid rent of \$1,050.00 that was due January 1, 2016, in accordance with section 26 of the Act. Based on the aforementioned, I accept the undisputed evidence that rent remained unpaid and I award the Landlord unpaid rent for January 1, 2016 in the amount of **\$1,050.00**.

As noted above this tenancy ended **January 15, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for February and March 2016. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant. The Landlord is required to minimize his losses by attempting to re-rent the unit as soon as possible, pursuant to section 7(2) of the Act. Therefore, I award the Landlord use and occupancy and any loss of rent for the period of February 1, 2016 to March 14, 2016 in the amount of **\$1,575.00** (\$1,050.00 plus \$525.00). If the Landlord suffers additional loss they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord has been issued a Monetary Order in the amount of **\$2,725.00** (\$1,050.00 + \$1,575.00 + \$100.00) which may be enforced through Small Claims Court upon service to the Tenant.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Tenant's application was dismissed without leave to reapply. The Landlord was successful with their application and was granted an Order of Possession and a Monetary Order in the amount of \$2,725.00.

This decision is final, legally binding, and 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: March 02, 2016

Residential Tenancy Branch

