



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord, the landlord's English language interpreter EE and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 11, 2016 ("10 Day Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed that the tenant began living in the rental unit approximately two years prior to this hearing date, and then he moved out. Both parties agreed that the tenant moved back into the unit on May 1, 2015. The tenant said that he signed a written tenancy agreement approximately one month prior to this hearing, while the landlord denied this fact. Both parties agreed that a security deposit of \$1,000.00 was paid by the tenant and the landlord continues to retain this deposit. During the hearing, I notified the landlord that this security deposit was in excess of half a month's rent, which is the limit for security deposits under section 19 of the *Act*. The tenant continues to reside in the rental unit.

Both parties agreed that monthly rent in the amount of \$500.00 is payable on the first day of each month. Both parties agreed that the landlord attempted to charge the tenant rent of \$2,000.00 per month beginning in November 2015, due to kitchen renovations being done at the rental unit. The landlord said that she then spoke with the Residential Tenancy Branch ("RTB"), who said she cannot do that. The landlord said that she informed the tenant that the rent would remain at \$500.00 per month after speaking to the RTB. The tenant said that he did not pay this increased rent because he did not think it was fair to arbitrarily increase his rent when the kitchen renovations were not done and there were other problems in the rental unit. He said that the landlord did not inform him that rent of \$500.00 was due for each month, after she spoke with the RTB.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,500.00 was due on November 1, 2015. The notice does not indicate an effective move-out date at all. The landlord stated that the tenant owed \$1,500.00 total for rent from November 2015 to January 2016. The tenant said he paid \$500.00 cash for November 2015 rent to the landlord on October 31, 2015, while the landlord said she was not paid any rent at all.

The landlord seeks a monetary order of \$2,500.00 for unpaid rent from November 2015 to March 2016. The tenant agreed that he did not pay rent from December 2015 to

March 2016, totalling \$2,000.00 because he thought the rent was \$2,000.00 per month and he did not agree to pay it to the landlord. The landlord also seeks to recover the \$100.00 filing fee paid for her Application.

Analysis

Section 46(1) of the *Act* states that the landlord may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlord may only issue a 10 Day Notice for valid reasons.

I find that the total amount indicated by the landlord on the 10 Day Notice of \$1,500.00 was incorrect. The landlord said that the above amount included rent of \$500.00 for each of November, December and January, yet the notice says that the above amount was due on November 1, 2015. Therefore, as of November 1, 2015, the unpaid rent owing would have been \$500.00 as per the landlord's testimony, and this would have been the correct amount to indicate on the 10 Day Notice. I find that by issuing a notice indicating an incorrect amount, the tenant was not provided with proper notice of the correct amount of rent due. Further, the amount of rent due was unclear as the tenant thought it was \$2,000.00 per month so he refused to pay it, while the landlord said it was \$500.00 per month, but she initially tried to charge \$2,000.00 per month as of November 2015, the month in question. Moreover, the landlord did not indicate any effective move-out date on the notice and did not explain why when questioned at the hearing. Failing to indicate an effective move-out date on the 10 Day Notice does not comply with section 52(c) of the *Act*. For the above reasons and on a balance of probabilities, I find that the landlord issued an invalid 10 Day Notice to the tenant.

Therefore, I find that the tenant did not have proper notice of the correct amount of rent due, such that he could pay the correct amount owed to the landlord or file an application to dispute the actual amount owing, within five days of deemed receipt. Accordingly, I find that the landlord's 10 Day Notice, dated January 11, 2016, is invalid. The landlord's 10 Day Notice, dated January 11, 2016, is cancelled and of no force or effect. The landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, dated January 11, 2016, is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord seeks a monetary order of \$2,500.00 for unpaid rent from November 2015 to March 2016. The tenant agreed that he owed rent from December 2015 to March 2016 inclusive, totaling \$2,000.00. I accept the tenant's evidence that he paid \$500.00 for rent in November 2015. Therefore, I find that the landlord is entitled to \$2,000.00 in rental arrears from December 2015 to March 2016.

As the landlord was partially unsuccessful in this hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this Application from the tenant. The landlord must bear the cost of the filing fee.

Conclusion

The landlord's Application for an order of possession based on the 10 Day Notice, dated January 11, 2016, is dismissed without leave to reapply. The landlord's 10 Day Notice, dated January 11, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord's Application to recover the \$100.00 filing fee is dismissed without leave to reapply. As this tenancy is continuing, I dismiss the landlord's application to retain the tenant's security deposit, as it is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

I issue a monetary order in the landlord's favour in the amount of \$2,000.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 07, 2016

Residential Tenancy Branch