



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause and breach of an agreement with the landlord; a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a copy of a registered mail receipt, including tracking number, to show the hearing package was sent to the tenant at the rental unit address via registered mail on February 16, 2016. The registered mail was returned to the landlord because it was unclaimed, as seen on a copy of the registered mail envelope provided as evidence by the landlord. The landlord confirmed that the tenant continues to occupy the rental unit as his possessions remain at the rental unit. The landlord also testified that after receiving the registered mail back the landlord delivered the hearing package to the mail box at the rental unit and she observed that the package was subsequently removed from the mailbox. I was satisfied the landlord sent the hearing documents to the tenant in a manner that complies with the Act. Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or does not pick up their mail. Based on the above, I found the tenant deemed to have been served with the hearing documents five days after mailing and I continued to hear from the landlord without the tenant present.

I noted that the landlord indicated two dispute codes on the application for ending the tenancy and seeking an Order of Possession. Beside the dispute code that pertains to ending the tenancy for cause the landlord placed an asterisk and at the bottom of the application indicated this dispute code was indicated because the tenant has breached section 2 of the tenancy agreement. The landlord confirmed that she had not yet served the tenant with a 1 Month Notice to End Tenancy for Cause in the approved form as is required in order to obtain an Order of Possession for cause. I found this dispute code incorrectly indicated and that the landlord's reason for seeking an end of tenancy appropriately indicated when she selected the dispute code related to seeking an Order of Possession based upon a breach of an agreement. Accordingly, I amended the application to remove the dispute code related to ending the tenancy for cause and I

continued to consider whether the landlord is entitled to an Order of Possession for breach of an agreement.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for breach of an agreement with the landlord?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenant has been residing at the rental unit since 2009. Periodically, the parties would execute a new tenancy agreement. The most recent tenancy agreement was executed in February 2015 (herein referred to as the tenancy agreement). Pursuant to the tenancy agreement, the tenancy started February 1, 2015 for a one-year fixed term and the tenant is required to pay rent of \$1,725.00 on the first day of every month.

The landlord seeks to obtain an Order of Possession on the basis the fixed term tenancy has ended as provided in clause 2 of the tenancy agreement. Clause 2 of the tenancy agreement states:

This tenancy starts on February 1, 2015. This tenancy is for a fixed length of time, one year, ending on January 31, 2016. Notwithstanding Section 9 of the RTA, at the end of this fixed length of time, the tenancy may continue for another fixed length of time as the landlord and tenant shall agree.

[Reproduced as written]

The landlord submitted that the parties had email communication about entering into a new tenancy agreement but an agreement was not be reached. Although the landlord stated that issued a letter to the tenant indicating she was serving him with a notice to end tenancy, the landlord confirmed that she has not yet served the tenant with a Notice to End Tenancy in the approved form. The landlord was informed of her right to do so should the tenancy continue at this time.

I heard that the tenant remains in possession of the rental unit and has not paid any rent for February or March 2016. In addition to an Order of Possession the landlord seeks a Monetary Order for the unpaid and/or loss of rent in the sum of \$3,450.00.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; email communication between the parties in January 2016; and, the registered mail receipt and envelope.

Analysis

Section 44 of the Act provides for ways a tenancy ends. Below, I have reproduced section 44 for the parties' reference.

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) section 49 *[landlord's notice: landlord's use of property]*;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms

[Reproduced as written with my emphasis underlined]

The landlord seeks an end to this tenancy on the basis the fixed term has ended and the parties did not enter into a new agreement or extend the fixed term by mutual agreement. However, in order to find the tenancy has ended due to the expiry of the fixed term, as provided in subparagraph (2) above, the tenancy agreement would have to require the tenant to vacate the rental unit at the end of the fixed term which it does not. Rather, since the tenancy agreement does not require the tenant to vacate the rental unit at the end of the fixed term, I find, pursuant to paragraph (3) above, that the tenancy continued on a month to month basis on the same terms.

In light of the above, I found this tenancy remained in effect after January 31, 2016 on a month to month basis on the same terms reflected in the tenancy agreement signed by the parties in February 2015 and I deny the landlord's request for an Order of Possession for breach of an agreement.

Having found the tenancy continued on the same terms, I further find the tenant remained obligated to pay rent of \$1,725.00 for the month of February and March 2016. I accept the unopposed evidence before me that the tenant has not paid rent for these months. Therefore, I grant the landlord's request for a Monetary Order for unpaid rent in the sum of \$3,450.00.

Despite providing the landlord with a Monetary Order for unpaid rent for February and March 2016 I authorize the landlord to include the unpaid rent for these months in a 10 Day Notice to End Tenancy for Unpaid Rent she may elect to serve upon the tenant should the rent remain outstanding.

Having found the tenancy remains in effect I have not offset the landlord's monetary award by the security deposit. Rather, I order that the security deposit remain in trust for the tenant to be administered in accordance with the Act.

I make no award for recovery of the filing fee.

Conclusion

The landlord's request for an Order of Possession for breach of an agreement has been dismissed.

I have found that upon expiration of the fixed term the tenancy continued on a month to month basis on the same terms reflected in the tenancy agreement executed by the parties in February 2015.

The landlord has been provided a Monetary Order in the sum of \$3,450.00 for to unpaid rent for the months of February and March 2016. However, the landlord remains at liberty to include the unpaid rent for these months in a 10 Day Notice to End Tenancy for Unpaid Rent she may elect to serve upon the tenant should the rent remain outstanding.

The security deposit remains in trust at this time to be administered in accordance with the Act.

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 31, 2016

Residential Tenancy Branch