



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2012 for an initially fixed term, thereafter reverting to a month to month tenancy. Current market rent for this unit is \$1,500.00 per month; however, the tenant currently receives a rent subsidy making

her monthly rent payments \$554.00 per month. Rent is due on the 1st of each month. The tenant paid a security deposit of \$450.00 on August 15, 2012.

The landlord testified that the tenant failed to pay all the rent due on February 01, 2016 leaving an unpaid balance of \$2,992.50. This amount had accumulated since August, 2015 as shown in the landlord's rent ledger. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on February 06, 2015. This was posted on the tenant's door and was deemed to have been served three days after. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 16, 2016. The tenant did not pay all the outstanding rent or file an application to dispute the Notice. The tenant made payments of \$331.50 on February 10, 2016 and \$700.00 on February 22, 2016. The tenant therefore owed \$1,961.00 at the end of February, 2016. In March rent of \$554.00 was added to the outstanding arrears and the tenant paid \$1,354.00 in March, 2016 leaving an amount owed of \$1,170.00. In April the rent was added to the arrears and the tenant made a payment of \$654.00 leaving an amount owed of \$1,061.00. The landlord seeks to amend their application to recover the rent owed now of \$1,061.00.

The landlord agreed that when they accepted rent after the effective date of the Notice they did not inform the tenant that this rent was accepted for use and occupancy only and the landlord did not intend to reinstate the tenancy.

The landlord has applied to retain the tenant's security deposit of \$450.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant disputed the landlord's claim that rent of this amount is owed and stated that the landlord has not notified the tenant in 2015 that she owed rent when her subsidized rent went up when her boyfriend moved into her unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

The applicable law is explained in the Residential Tenancy Policy Guidelines #11 Re; Amendment and Withdrawal of Notices.

This guideline explains that a Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by express or implied consent of both parties.

This guideline also explains that the question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

In this case the landlord accepted five payments for rent after the effective date of the Notice. Nothing was given to the tenant that stated that these five rent payments were being accepted for use and occupancy only and that the acceptance of this rent did not reinstate the tenancy. I find that by accepting the rent after February 16, 2016 in this manner the landlord has in fact reinstated the tenancy. Accordingly the landlord's application for an Order of Possession is dismissed.

However, I am satisfied from the evidence before me that there is outstanding rent as of April 08, 2016 of **\$1,061.00**. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

The landlord has applied for an Order to be permitted to keep the security deposit of \$450.00; however, as the tenancy will continue at this time I find the landlord's application is dismissed with leave to reapply. The security deposit must continue to be held in trust by the landlord until the tenancy is legally ended.

As the landlord's application has some merit I find, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,161.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court 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: April 13, 2016

Residential Tenancy Branch