



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, FF
 CNR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession 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 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.

The parties both attended the hearing and gave affirmed testimony, and the tenant called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began in the winter of 2014 and the tenant still resides in the rental unit. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held

in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper unit.

Rent was originally \$600.00 per month but was increased with the consent of the tenant to \$700.00 when the tenant got a roommate in the summer of 2015, and was reduced back to \$600.00 per month when the roommate moved out in January, 2016. The parties entered into a written tenancy agreement at the commencement of the tenancy but did not enter into written tenancy agreements when the rental amounts changed. A copy of the tenancy agreement has not been provided by either party.

The tenant is currently in arrears of rent the sum of \$750.00, being \$250.00 for each of the months of February, March and April, 2016. The landlord receives \$350.00 per month from a government Ministry and the tenant is to make up the shortfall, but has not done so since January, 2016.

The tenant had told the landlord in January that the roommate had moved out, and the roommate's car has not been seen. However, the landlord learned on or about March 2, 2016 that the tenant's roommate had not moved out of the rental unit.

On March 4, 2016 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated March 4, 2016 and contains an effective date of vacancy of March 14, 2016 for \$500.00 of unpaid rent that was due on March 1, 2016. No rent has been paid since the issuance of the notice, and the landlord seeks an Order of Possession and a monetary order for \$750.00, based on rent in the amount of \$600.00 per month, and recovery of the \$100.00 filing fee.

The tenant testified that the roommate's share of the rent was going to be paid by the Ministry, but the landlord refused it. The landlord wanted the tenant's roommate to move out and refused the rent from the Ministry. The Ministry had called the landlord saying they would pay and the landlord said he didn't want the roommate there and refused the money.

The tenant admits that he told the landlord in January, 2016 that the roommate had moved out, but just said that because it was illegal for the landlord to require the roommate to move out. The landlord kept harassing the tenant about the roommate being there, so the tenant told the landlord that the roommate had moved out and then the landlord refused the rent money.

Police had attended on the property to tell the tenant's roommate that his stolen car had been found.

The tenant's witness testified that he is the tenant's roommate and resides in the rental unit. The witness has a letter from the Ministry proving that the Ministry is willing to pay the arrears. The roommate missed his payment for January rent which is how this all started. The Ministry said they would send a cheque right away, but the landlord told the Ministry that the witness didn't live there. It's become a whole new problem because now the witness has to prove to the Ministry where he lives. There was no need for things to go this far; money is still there, and this is really a personal issue with the landlord.

The witness, in cross, denies that he told the landlord in February that he was there visiting.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. Where a landlord refuses rent money as a means to evict a tenant, the landlord has not established the reasons for issuing it. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*.

The tenant admits telling the landlord in January, 2016 that his roommate moved out. The landlord had an obligation to disclose that information to the Ministry. Otherwise, if the landlord accepted the money when the roommate didn't live there, the landlord would be committing fraud.

The *Act* also states that a tenant must pay rent when it is due, and there is no dispute that rent is due on the 1st of each month. The tenant didn't pay the rent, didn't advise the landlord that the roommate was still there, and I cannot make a finding that the landlord refused the rent. Therefore, I find that the landlord is entitled to an Order of Possession, and a monetary order for the outstanding rent in the amount of \$750.00.

The tenant's application is dismissed.

Since the effective date of vacancy contained in the notice to end the tenancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The landlord has not applied for an order permitting the landlord to keep the security deposit, and I leave it to the parties to deal with it in accordance with the *Residential Tenancy Act*.

Since the landlord has been successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$850.00.

I order the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

This order is 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: April 15, 2016

Residential Tenancy Branch