



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Preliminary Issues

Upon review of the Landlords' application for dispute resolution and the Monetary Order Worksheet the Landlord wrote the following amounts being claimed:

December 2015 rent \$1,600; Jan 2016 rent \$1,600; Feb 2016 rent \$1,600; Mar 2016 rent \$1,600; Apr 2016 rent \$1,600.00.

Based on the aforementioned I find the Landlords had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payments for occupancy after the effective date of the 10 Day Notice. Therefore, I amended the Landlords' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on March 2, 2016. The Landlords filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities and for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, as per the amendment listed above.

The hearing was conducted via teleconference and was attended by the Landlords' Agent (the Landlord) and both Tenants.

On April 06, 2016 the Landlords submitted 5 pages of evidence to the Residential Tenancy Branch (RTB). The Landlord affirmed that they served the Tenants with copies of the same documents that they had served the RTB. The Tenants acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submission as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Have the Landlords proven entitlement to an Order of Possession?
- 2) Have the Landlords proven entitlement to a monetary order?

Background and Evidence

The parties submitted they entered into a written fixed term tenancy agreement, for the upper level of the house, which was signed on March 3, 2015. The tenancy agreement did not list a start date or end date; however, it did indicate the tenancy could continue on another fixed period of time or on a month to month basis. The Tenants occupied the rental unit as of March 3, 2015 and were required to pay rent of \$1,600.00 on or before the first of each month. On or before March 3, 2015 the Tenants paid \$800.00 as a security deposit and \$800.00 as a pet deposit.

The Landlords testified that on February 13, 2016 after the Tenants failed to pay their rent for a couple of months, copies of a 10 Day Notice were served upon the Tenants in the following four ways. In person; via registered mail; via regular mail; and posted to the Tenants' door. The 10 Day Notice listed rent of \$1,600.00 was payable on February 1, 2015 and an effective date of February 26, 2016.

The Landlord testified the Tenants remained in the rental unit and did not pay rent for December 2015, January 2016, February 2016, March 2016, or April 2016. As a result they are seeking to recover the five months unpaid rent of \$8,000.00 (5 x \$1,600.00) and an Order of Possession. The Landlord stated they went to the rental unit on February 28, 2016 and there were still possessions inside the rental unit and a vehicle parked on the property.

The Tenants testified they moved out of the rental unit as of March 1, 2016. They asserted they told the Landlord they would be moving out when they received the eviction paperwork.

Later in their submissions the Tenants read a text message into evidence which they sent the Landlord on March 24, 2016. That text message to the Landlord stated the Tenants had moved out March 1, 2016 and would not be returning the keys because their key no longer worked in the rental unit lock. The Tenants asserted the front door lock had been tampered with or changed by the Landlords.

The Tenants argued they did not pay their rent because they had no furnace in the winter. They asserted they paid \$800.00 to purchase a furnace for the home so they did not pay rent for December 2015. They argued they were evicted a week after they purchased the furnace and the Landlords gave them until January 1, 2016 to move out.

The Landlord testified they did not consider the Tenants moved out until they received the keys back from them. The Landlord stated the Tenants had told them there was a problem with the furnace and they would be replacing it; however, the Tenants never did replace the furnace and never gave the Landlords a receipt to prove they purchased a new furnace.

The Tenants confirmed they did not give the Landlords a receipt for the purchase of a furnace. They argued they did not have a receipt to give to the Landlords. The Tenants asserted there were other problems with the Landlords turning off the water and hot water while they were living in the rental unit.

In response to the Tenant's submissions the Landlord denied changing the locks. At the conclusion of the hearing the Landlord asked if the Tenants would be picking up their remaining possessions that were left in the house and the garage. The Landlord stated they had entered the house on April 10, 2016 and moved all of the Tenants' possessions into the garage. The Landlord stated they have made no attempts to re-rent the unit at this time as they are conducting renovations.

The parties mutually agreed to meet at the rental unit on May 1, 2016 at 1:00 p.m. at which time the Tenants would pick up their remaining possessions. I informed both parties that if the Tenants failed to pick up their possessions as mutually agreed the Landlord would be at liberty to discard all remaining possessions and would be at liberty to recover the cost of that disposal from the Tenants.

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(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.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

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.

In this case the Tenants received the 10 Day Notice on February 13, 2016 and the effective date of that Notice was February 23, 2016. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **February 23, 2016**.

There was undisputed evidence before me that the Tenants informed the Landlord they had vacated the property via text message which was sent on March 24, 2016. There was further evidence the Landlord had since entered the property, regained possession and moved all of the Tenants possessions into the garage, as of April 10, 2016.

There was insufficient evidence before me that would explain why the Landlord waited until April 10, 2016 to clear out the rental. Therefore, I find the Tenants over held the rental unit until **March 24, 2016** and the Landlord regained possession of the rental unit as of March 25, 2016, the day after the text message was sent informing her the Tenants had vacated the rental unit, pursuant to section 62 of the *Act*. As the Landlords have regained possession the request for an Order of Possession is now moot.

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*.

Notwithstanding the Tenants' submissions there were problems with the furnace; I find there was insufficient evidence before me that would prove the Tenants were excused from paying their rent. I make this finding in part as there were not receipts submitted into evidence and the Landlord submitted disputed verbal testimony that the furnace had not been replaced.

The undisputed evidence was the Tenants had not paid the rent for December 2015, January 2016 and February 2016 for the total amount of \$4,800.00 (3 x \$1,600.00), in breach of section 26 of the *Act*. As per the aforementioned, I find the Landlords have met the burden of proof and I award them unpaid rent for the period of December 2015 to February 2016 in the amount of **\$4,800.00**.

As noted above, this tenancy ended **February 23, 2016** in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for loss of rent and/or use and occupancy of the rental unit for March 2016 and April 2016, not rent.

As indicated above, I find the Landlords regained possession of the rental unit as of March 25, 2016. Accordingly, I grant the claim for use and occupancy and loss of rent for the period of March 1 to 25, 2016 based on a daily rental rate of \$52.60 for a total amount of **\$1,315.00** (25 days x \$52.60).

The Landlords were required to mitigate or minimize any loss of rent pursuant to section 7, of the *Act*, by attempting to re-rent the unit for as soon as possible. Therefore, I find there was insufficient evidence to prove a claim for the period of March 26, 2016 to April 30, 2016 for loss of rent based on the Landlord's submission that they had made no effort to re-rent the unit as they were conducting renovations. Accordingly, the claim for the period of March 26, 2016 to April 30, 2016 is dismissed, without leave to reapply.

Based on the above, the Tenants are hereby ordered to pay the Landlords the monetary award of **\$6,115.00** (\$4,800.00 + \$1,315.00), forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$6,115.00** which may be enforced through Small Claims Court after service to the Tenants.

Conclusion

The Landlords were found to have regained possession of the unit as of March 26, 2016. The Landlords were partially successful with their monetary application and were awarded a Monetary Order in the amount of **\$6,115.00**.

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: April 22, 2016

Residential Tenancy Branch