



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants and landlord along with the landlord's agent, BD ("landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlord's application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the Act, I find that the parties were duly served with the applications.

Preliminary Issue – Amendment of Landlord's Application

Although the landlord applied for an order of possession for unpaid rent, the landlord and tenants agreed the landlord did not issue a 10 Day Notice for unpaid rent but rather the landlord issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). Given the parties agreement, and in accordance with section 64(3)(c) of the Act, I amend the landlord's Application from an order of possession for unpaid rent to an order of possession for cause.

The tenants confirmed personal receipt of the landlord's 1 Month Notice, dated February 21, 2016 by way of posting to the rental unit door. In accordance with section

88 of the *Act*, I find that the tenants were duly served with the landlord's 1 Month Notice, on February 24, 2016, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties testified that this tenancy began on February 1, 2016 on a month-to-month basis. Rent in the amount of \$695.00 is payable on the first of each month. The tenant remitted \$300.00 cash for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord issued a 1 Month Notice on February 21, 2016. The reasons cited in the 1 Month Notice was that the tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The last reason cited in that 1 Month Notice was that the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord. The 1 Month Notice indicates a move-out date of March 21, 2016.

The landlord testified to three incidents involving the tenants, only one of which occurred prior to the 1 Month Notice. Both parties testified to the events of February 20, 2016. The landlord testified hearing the sounds of a female crying, fighting and banging from the rental unit. The landlord testified pepper spray was used and infiltrated into the landlord's living space. The tenants' explained they had engaged in a verbal altercation with each other that resulted in one of the tenants being pepper sprayed by a friend. The tenants' position is the pepper spray was used outside and not inside the rental unit. The police attended.

The landlord seeks a monetary order of \$1,255.00 for unpaid rent from March 1 to April 25, 2016 inclusive. The landlord's monetary calculation includes a pro-rated April rent in the amount of \$560.00. The landlord claimed that the tenants did not pay any rent for the above two months. The tenants' position is that the landlord verbally requested to keep the \$300.00 security deposit as March rent and declined to accept the April rent.

The landlord testified he could not provide a monetary amount he was seeking for damages as he has not inspected the rental unit due to the tenant's occupancy. The landlord is also seeking to recover the \$100.00 filing fee for this Application from the tenant.

Analysis

Section 47 of the Act provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony, I find that the tenants were served with an effective notice. Although the tenants' participated in the hearing and verbally disputed the 1 Month Notice, the tenants did not file an application to dispute the notice. As the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit, I find that the landlord is entitled to an order of possession.

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, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the landlord proved that the current rent for this unit is \$695.00. I find the landlord provided evidence that the tenant failed to pay full rent from March 1, to April 25, 2016. I find the corrected pro-rated rent for April is \$579.25 ($\$695.00/30 \text{ days} = \$23.17 \times 25 \text{ days}$). Therefore, I find that the landlord is entitled to \$1,274.25 in rent. The landlord did not apply to retain the security deposit and accordingly I have not applied the security deposit to the amount awarded. The parties should deal with the deposit in accordance with the provisions of the Act.

Although the landlord applied for compensation for damages, I find the claim to damages premature as the tenants have not vacated the rental unit. For this reason I

dismiss the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent in the amount of \$1,274.25. As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application for a total award of \$1,374.25.

Conclusion

The landlord's application for an order of possession is granted.

The landlord's application for damages is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,374.25 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: April 28, 2016

Residential Tenancy Branch