



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF
DRI, CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants' application disputes an additional rent increase; seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities; and claims a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, as well as recovery of the filing fee.

Both landlords and both tenants attended the hearing, and the landlords had one witness available to testify. However, only one of the landlords and one of the tenants provided affirmed testimony and the landlord's witness was not called to testify.

The parties were given the opportunity to question each other and make closing submissions. The parties also provided evidentiary material in advance of the hearing, 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.

During the course of the hearing, the parties agreed to end the tenancy effective June 30, 2016 at 1:00 p.m., and therefore, I grant an Order of Possession in favour of the landlords effective that date and time.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in partial satisfaction of the claim?
- Have the tenants established a rent increase contrary to the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 1, 2014 and expired on March 31, 2016 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$350.00 per month is payable on the 1st day of each month, however the parties also entered into a purchase agreement. Copies of both agreements have been provided. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

On May 17, 2016 the landlord posted 2 notices to end the tenancy to the door of the rental unit, copies of which have been provided. The first is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 16, 2016 and contains an effective date of vacancy of May 26, 2016 for \$500.00 of unpaid rent that was due on May 1, 2016. The other is a 2 Month Notice to End Tenancy for Landlord's Use of Property also dated May 16, 2016 and containing an effective date of vacancy of July 16, 2016. The reason for issuing it is: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). Later the same day, the landlord hand delivered another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has also been provided. It is dated May 16, 2016 and contains an effective date of vacancy of May 26, 2016 for unpaid rent in the amount of \$925.00 that was due on May 1, 2016.

The tenant further testified that the Contract of Purchase and Sale provides that of the \$850.00 per month of rent, \$500.00 of that would be considered as the down payment which would amount to \$9,000.00 by March 1, 2016. However, rather than setting it aside, the landlord spent it so the tenants couldn't get the financing so had to borrow from parents. The landlord agreed to give back \$8,500.00 after the purchase, and then withdrew that, so the tenants didn't purchase the home.

The tenant further testified that there are no rental arrears. The tenants paid \$425.00 for April, \$350.00 for May and \$350.00 for June, 2016, all by bank transfer on-line which was the normal method of payment. There is no contract in place now for the purchase of the home, so rent is \$350.00 per month.

The tenants seek a determination that after the term completed, rent is \$350.00 per month.

The tenants also claim compensation in the amount of \$250.00 per month for 4 months of storage and recovery of the \$100.00 filing fee.

The landlord testified that the contract for the sale of the home to complete was extended 5 times for the benefit of the purchasers, and the price was dropped by almost \$10,000.

The landlord further testified that there was no suggestion that \$500.00 would be set aside each month. The bank wouldn't accept that equity as a down payment without seeing that it was in a bank account somewhere, and there was no mention that the landlord had to do that.

The tenants only paid \$175.00 for June, 2016 and a bank statement of the landlord has been provided. There have been no other payments since, however when asked if a second payment had been received on June 2, 2016 electronically, the landlord could not confirm or deny.

Analysis

Firstly, I have no authority to deal with a Contract of Purchase and Sale, only with a tenancy agreement. The tenancy agreement clearly states that rent is \$850.00 per month.

I find that the landlords have established a claim of \$425.00 owed for April, and \$500.00 for May, 2016.

Where a landlord gives a notice to end a tenancy for landlord's use of property, the landlord is required to provide the equivalent of one month's rent to the tenants, which is generally obtained by not charging rent for the final month of the tenancy. However in this case, the landlords gave a 10 Day Notice to End Tenancy for Unpaid rent or Utilities the same day, which requires the tenant to pay the rent in full within 5 days or move out in 10 days. The tenants didn't pay the outstanding rent and the landlords had no obligation to provide that compensation because the tenants ought to have vacated

within 10 days. The tenant testified that a portion of the rent for June was paid on June 2, 2016, which the landlord could not confirm. Therefore, I find that the landlords have established a claim of \$500.00 for the month of June, 2016.

I see no basis for the tenants' claim for storage fees of 4 months, and I dismiss the tenants' claim.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$425.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords for the difference in the amount of \$1,100.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective June 30, 2016 at 1:00 p.m. and the tenancy will end at that time.

I further order the landlords to keep the \$425.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

The tenants' application is hereby dismissed.

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: June 24, 2016

Residential Tenancy Branch