



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR, MNDC, AS, O

For the landlord – OPR, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to allow the tenants to assign or sublet because the landlord's permission has been unreasonably withheld; and other issues. The landlord applied for Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

The tenant CG and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenants’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants’ application to cancel the Notice to End Tenancy and I sever the remaining sections of the tenants’ claim.

Issue(s) to be Decided

- Are the tenants entitled to an Order cancelling the 10 Day Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?

Background and Evidence

The parties agreed that this fixed term tenancy started on February 01, 2016 and is due to expire on January 31, 2017. Rent for this unit is \$1,850.00 per month due on the 1st of each month. The tenants paid a security deposit of \$925.00 and a pet deposit of \$925.00 just prior to the start of the tenancy.

The landlord testified that the tenants failed to pay all the rent due on June 01, 2016 leaving an unpaid balance of \$525.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on June 03, 2016. This was sent by registered mail and was deemed to be served five days later. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 18, 2016. The tenants did not pay the outstanding rent within five days but did make a payment of \$299.00 on June 09, 2016 and a further payment of \$225.00 on June 20, 2016. The landlord issued the tenant with a receipt for this payment stating it was accepted for use and occupancy only.

The landlord testified that on July 01, 2016 the tenants paid \$925.00 towards rent for July and this was also accepted for use and occupancy only. the tenants now owe a total amount of \$1.00 for June and \$925.00 for July. The landlord requested permission to amend their application to include the outstanding rent for July as the tenants have continued to live in the rental unit and would know that rent is due on the first of each month.

The landlord testified that a utility bill was provided to the tenants on June 13 with a written demand to pay the bill within 30 days. As the tenants have not paid this bill of \$59.07 the landlord seeks to amend their application to recover this amount from the tenants

The landlord testified that the tenancy agreement provides for a fee of \$5.00 per day being charged for late fees for any month in which rent is not paid on the day it is due. The landlord seeks to recover a late fee of \$25.00 for June, 2016.

The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant attending does not dispute the landlord's claim that they did not pay all the rent on June 01, 2016 and that the tenants had owed \$525.00 for June. The tenant testified that on April 29, 2016 she had told the landlord that her brother in law wanted to move into the unit but the landlord said she was not sure. On May 18, 2016 when the landlord visited the tenants the tenants asked her to sign a intent to rent form so their brother in law could move in as an occupant to help them with the rent. The landlord said she was not sure if the owner would allow this due to the tenant's brother in laws criminal record. The tenant testified that the landlord is not allowed to check criminal records without the person's consent and she denied him the opportunity to move into the unit.

The tenant testified that on June 01, 2016 she had given the landlord a month's notice to sublet the unit and the *Act* states the tenants may assign or sublet a unit if the landlord does not respond within 10 days without the landlord's written consent. As the landlord did not get back to the tenants regarding this they said the tenant's brother in law could move in and they arranged to have all the rent money; however, as the landlord would not let him move in they did not have all the rent money. The tenant agreed that she did not pay all of the outstanding rent for June within five days of receiving the 10 Day Notice and agreed that only half the rent has been paid for July. The tenant testified that she did have a 0.93 cent credit for May and therefore there is only 0.07 cents owed for June.

The landlord agreed the tenants had a credit of \$0.93 cents for May, 2016.

The tenant disputed that she has been provided with a copy of the utility bill until she received the landlord's evidence package on June 20, 2016. The tenant testified that she therefore has until July 20th to pay this bill. The tenant raised some concerns with the previous water bill provided to them in May and asked the landlord why they are receiving another bill in June for water. The tenant and landlord agreed to get together to look at the dates on the bills.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that there is outstanding rent for June of \$0.07 and outstanding rent for July of \$925.00. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$925.07**.

With regard to the landlord's claim to recover \$25.00 for late fees for June , 2016; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees of \$5.00 per day. As this is not permitted under the *Act* and the maximum amount the landlord can charge is \$25.00 in any month I limit the landlord's claim to \$25.00. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover \$25.00 in late fees for June, 2016.

With regard to the landlord's claim for utilities, there is insufficient evidence before me that the landlord sent the tenant a copy of the utility bill and a written demand for payment within 30 days, prior to sending a copy of the bill in her evidence package. Consequently, I find the landlord's claim will not be amended today to deal with the utilities. The tenant is put on notice that this utility bill must be paid by July 20, 2016; however, if there has been any overpayment for any other utility bills or if this utility bill provides a service that falls outside the end date of the tenancy then the landlord must prorate the utility bills accordingly.

The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the balance owing as follows: **\$950.07**.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was sent by registered mail it is deemed served five days later on June 08, 2016. The effective date of the Notice is amended to June 18, 2016, pursuant to s. 53 of the *Act*. The tenants did not pay all the outstanding rent within five days although they did apply to dispute the Notice.

Based on the foregoing, I find that the landlord is entitled to an Order of Possession. As the effective date of the Notice has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

The tenant agreed that they failed to pay all the rent due with the five allowable days of being deemed served the 10 Day Notice. The tenants argued that as the landlord withheld consent for the tenant's brother in law to move in that this prevented the tenants being able to pay all the rent. As the tenants must pay the rent whether or not the landlord complies with the *Act* then the tenants' recourse should have been to pay the rent and then file an application for dispute resolution seeking resolution about whether or not the landlord unreasonably withheld their consent for the tenant's brother in law to move into the unit. Consequently, as the rent was not paid within the five allowable days, I find that the tenants' application to cancel the Notice is dismissed without leave to reapply.

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 **\$950.07** pursuant to s. 67 and *Act*. The Order must be served on the tenants; if the tenants fail to comply with the

Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenants. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenants' application to cancel the 10 Day Notice to End Tenancy is dismissed without leave to reapply.

As this tenancy will end I dismiss the tenants' application to assign or sublet the rental unit without leave to reapply.

The tenants are at liberty to reapply for the section of their application severed today dealing with a Monetary Order for money owed or compensation for damage or loss.

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: July 15, 2016

Residential Tenancy Branch