



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on June 6, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. The Landlord and male Tenant provided affirmed testimony. The male Tenant confirmed receipt of the Landlord's application for Dispute Resolution, the hearing documents, and the Landlord's evidence.

The male Tenant testified that the female Tenant was with him and he would be the person speaking at the hearing on behalf of both Tenants. The female Tenant could be heard speaking in the background throughout the hearing. During the course of this proceeding all submissions on behalf of the Tenants were presented by the male Tenant; therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Upon review of the application for Dispute Resolution the male Tenant submitted that the female Tenant had a different surname. He argued that he did not know why her surname was listed on the application for Dispute Resolution as the same as his surname. The Tenant provided a different surname for the female Tenant.

Given the circumstances presented to me during the hearing, I favored the Landlord's submissions over the submissions of the Tenant. Therefore, I amended the style of cause of this Decision to include the respondents' names as listed on the application for Dispute Resolution and added the second name for the female Tenant as submitted by the male Tenant as being "a.k.a." the abbreviation for "also known as", pursuant to section 64(3)(c) of the Act.

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) Has the Landlord proven entitlement to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord testified they took over management of this rental property near the beginning of May 2016. He submitted evidence the Tenants have occupied the rental property since before they took over the management of the building. Rent, based on the records obtained from the owner, of \$850.00 less a \$200.00 credit was payable on the first of each month and there was record of a \$275.00 security deposit being paid by the Tenants.

The Landlord submitted that the male Tenant had been hired by the owner to be a caretaker, prior to their management of the building. The Tenant had been offered the \$200.00 rent reduction as payment for his services as caretaker.

The Tenant testified that his rent was initially \$550.00 per month which is why they only paid \$275.00 as the security deposit. He confirmed that his rent was increased to \$850.00 with the \$200.00 reduction for his work as a caretaker, bringing his rent down to \$650.00 per month.

On April 21, 2016 the owner personally served the male Tenant a 10 Day Notice to end tenancy listing \$1,410.00 as unpaid rent that was due on April 1, 2016. The Tenant confirmed he did not dispute the 10 Day Notice and he did not pay the rent in full. The Tenant asserted that the female Tenant attempted to give the new property manager their rent and he refused to take it.

Both parties submitted evidence of dangerous events which have taken place in the building. The events referenced included shootings, gang tagging, and a murder which took place on the rental property. The Landlord testified that due to the aforementioned dangerous events the owner hired their property management division to take over management of the building.

The Landlord submitted evidence that each Tenant was served notice of the management change on May 5, 2016 which listed clear instructions on how rent was to be paid from that date forward. The Tenant confirmed receipt of the aforementioned notice. The Landlord confirmed the female Tenant asked him if he would take her rent while he was standing at her door in the building. The Landlord argued the female Tenant did not have anything in her hand at the time and he told her he would not accept the payment while standing in the building. The Landlord stated it was their policy that the Tenants not try to pay the property manager while he is at the building for security and safety reasons. Given the dangerous events occurring at the building it

would put the property manager at risk. In addition, the Landlord submitted that he did not have receipts or any way to accept multiple forms of payment.

The Landlord testified the Tenants made one payment towards April 2016 rent of \$50.00 which left a balance owed for April 2016 of \$600.00. No rent has been paid for May, June, or July 2016.

The Tenant did not dispute the fact that rent has not been paid as described by the Landlord. The Tenant confirmed they made no attempt to pay the rent in the manner described in the Landlord's May 5, 2016 letter. Rather, they simply argued the Landlord refused to take the rent payment while at the rental building and the owner refused to maintain the security cameras.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7(2) of the *Act* stipulates that 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.

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 April 21, 2016 and the effective date of the Notice was May 1, 2016. The Tenants neither paid the rent in full nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **May 1, 2016**. Accordingly, I grant the Landlords' request and issue them an Order of Possession effective 2 Days upon service to the Tenants. In the event that the Tenants do not comply with this Order it may be enforced through Supreme Court.

Section 26 of the *Act* stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement (verbal or written); despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenants have not paid the \$600.00 balance owed for April 2016 rent or the \$650.00 rent required for May 2016, in accordance with section 26 of the *Act*. As per the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for April and May 2016 in the amount of **\$1,250.00**.

Notwithstanding the 10 Day Notice which indicated there was an outstanding balance owed of \$1,410.00 as of April 1, 2016, in absence of testimony from the owner or

previous manager I find there was insufficient evidence before me to prove the actual amount outstanding for rent prior to April 1, 2016. Accordingly, the claim for outstanding rent prior to April 1, 2016 is dismissed, without leave to reapply.

As noted above, this tenancy ended **May 1, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the rental unit for June 2016 and July 2016, not rent. I approve the Landlords' requests to consider awarding them compensation for June 2016 and July 2016 given the delay from the time the Landlords filed their application on June 6, 2016 to the July 19, 2016 hearing date.

As per the foregoing, I grant the application be amended to include the request for compensation for damage or loss under the *Act*, Regulation or tenancy agreement. I grant the request, in part, as it is reasonable to conclude that the Tenants would be expected to pay for their occupation of the rental unit until such time as the Landlord regained possession.

The Tenants continue to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the full months of June and July 2016 in the amount of **\$1,300.00** (\$850.00 - \$200.00 x 2).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$275.00 deposit.

This application for Dispute Resolution meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid April 2016 and May 2016 Rent	\$1,250.00
Use and Occupancy June and July 2016	1,300.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$2,650.00
LESS: Security Deposit \$275.00 + Interest 0.00	<u>-275.00</u>
Offset amount due to the Landlord	<u>\$2,375.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$2,375.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$2,375.00** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlord was successful with their application and were awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$2,375.00**.

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: July 19, 2016

Residential Tenancy Branch