



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF; MT, CNR, O

Introduction

This hearing dealt with the landlords' 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 and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenants' cross application for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlords' 10 Day Notice pursuant to section 46;
- an "other" remedy to offset rent owed with work conducted at tenants' own expense

The landlords and tenants along with the tenants' agent, MH (the "agent") 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 parties confirmed receipt of each other's 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.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? If not, are the tenants entitled to cancel the landlords 10 Day Notice?

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, *Regulation* or tenancy agreement? If so, are the tenants authorized to offset rent owed with work conducted at tenants' own expense?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

The parties estimated that the tenancy began in 2002 on a fixed term for one year and continued on a month to month basis. Rent has increased from the original tenancy agreement amount of \$1,000.00 to the current amount of \$1,030.00, effective February 1, 2016. The tenants remitted \$450.00 for the security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$7,030.00 due on June 1, 2016 was personally served to the tenants on June 10, 2016. The agent confirmed the tenants received this 10 Day Notice by hand on June 10, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on June 10, 2016, the day it was personally served.

Landlords

The landlords seek a monetary order of \$7,280.00 in rent arrears from 2014 to July 2016 and \$269.59 in utilities. The parties agreed the tenants paid \$1,200.00 on July 21, 2016. Consequently the landlord now seeks \$6,349.59 in outstanding rent and utilities. The tenants agreed this amount remains outstanding.

The landlords are also seeking to recover the \$100.00 filing fee for this application.

Tenants

The agent explained that the reason the application for dispute resolution was not filed within ten days of receiving the 10 Day Notice is because she works Monday through Friday and was unable to assist her parents until after the deadline.

The agent is seeking to offset the outstanding rent and utilities with work conducted around the rental unit at the tenants own expense. The agent was unable to specify an amount and did not provide receipts or hours of work conducted.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch ("RTB"). If the tenant does not pay the overdue rent or 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.

Pursuant to section 66 of the *Act*, the director may extend a time limit only in exceptional circumstances. As per RTB Guideline 36, exceptional implies that the reason for failing to do something at the time required is very strong and compelling. Although the agent has provided a reason for filing late, I do not find a work commitment to be an exceptional circumstance. Rather I find this is the situation of most applicants and therefore do not find this a compelling enough reason to grant more time for the application.

Based on the parties' testimony, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent and have been denied more time to file an application to dispute the notice, 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. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

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*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlords proved that the current rent is \$1,030.00 and previous rent was \$1,000.00 for this unit. I find the landlords provided undisputed evidence that the tenants failed to pay full rent from 2014 to July 2016. Therefore, I find that the landlords are entitled to \$6,349.59 in rent and utilities.

In regards to the tenants' application to offset the outstanding rent and utilities with work conducted at the tenants own expense, I find I have no authority under the *Act* to offset work arrangements and dismiss this portion of the tenants' application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$450.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$5,899.59. 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 \$5,999.59.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$5,999.59.

The tenants' entire application is dismissed without leave to reapply.

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: August 02, 2016

Residential Tenancy Branch