



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF
OPR, MNR, MNDC, MNSD, 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlords.

The landlords attended the hearing however, the line remained open while the phone system was monitored for 10 minutes and no one for the tenants attended. One of the landlords gave affirmed testimony, and testified that the tenants were served with the Landlord's Application for Dispute Resolution, evidentiary material and notice of this hearing by handing the hearing packages to the tenants' adult brother who was also residing in the rental unit for a time.

The *Residential Tenancy Act* permits service of a hearing package by handing it to an adult person who apparently resides with the tenant if the landlord is applying for an Order of Possession, but not for applications seeking a monetary order or to retain the security deposit or pet damage deposit. Section 89 of the *Act* is included below. Therefore, I dismiss the landlords' applications for monetary orders with leave to reapply.

Since the tenants have not attended the hearing, I dismiss the tenants' application in its entirety without leave to reapply.

All evidentiary material of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the landlords recover the filing fee from the tenants for the cost of this application?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2016 and the tenants appear to have abandoned the rental unit effective sometime in July, 2016. Rent in the amount of \$1,250.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and one of the landlords resides in the upper level. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenants failed to pay rent when it was due in July, 2016 and on July 3, 2016 the landlords caused a notice to end the tenancy to be served to the tenants by posting it to the door of the rental unit. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has been provided and it is dated July 3, 2016 and contains an effective date of vacancy of July 14, 2016 for unpaid rent in the amount of \$1,250.00 that was due on July 1, 2016. The tenants have not paid any rent since the issuance of the notice, and the tenants are now in arrears of rent the sum of \$2,500.00 for July and August, 2016.

The landlord believes that the tenants have abandoned the rental unit, however one of the tenants moved out prior with the assistance of police. The landlords seek an Order of Possession and to remove unwanted items left by the tenants so the rental unit can be cleaned, repaired and re-rented.

Analysis

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. The tenants disputed the notice, but failed to attend the hearing. Having dismissed the tenants' application, I grant an Order of Possession in favour of the landlords.

The landlord also testified that some unwanted items of the tenants remain in the rental unit, but appears that the tenants have abandoned the rental unit and the unwanted items. I am satisfied in the circumstances that the tenants have abandoned the rental unit, and therefore, I grant the Order of Possession effective immediately. The regulations to the *Act* specify what a landlord must do with items left by a tenant:

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

- (b) keep a written inventory of the property,
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
 - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
- (a) the property has a total market value of less than \$500,
 - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
 - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

RESIDENTIAL TENANCY ACT (Service of Documents):

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

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

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed with leave to reapply.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The landlords' application for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective immediately.

I hereby 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 \$100.00.

These orders are final and binding and may be enforced.

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 24, 2016

Residential Tenancy Branch