Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR OPC CNC MNSD FF

Introduction:

Background:

On July 26, 2016 on an ex-parte Direct Request Proceeding, the landlord was granted an Order of Possession and a monetary order for $750 rent owed for July 2016. The tenant requested a Review. On August 9, 2016, the Decision and Orders made on July 26, 2016 were suspended and a new hearing was granted. It was discovered that due to an administrative error, the tenant's Application to dispute the Notice to End Tenancy was not scheduled to be heard with the landlord's Application. The landlord said they never received the tenant's Application for Dispute and had no knowledge of it.

The new hearing today was to allow both parties to state their case. However, only the landlord attended. In the original ex parte hearing, the tenant was deemed to be served with the 10 Day Notice to End Tenancy on July 9, 2016 which was 3 days after its posting. The landlord said they had no notice of the tenant's Application for Dispute. Before enforcing the Order of Possession, the agent called the office of the Residential Tenancy Branch on August 11 and on August 17, 2016 and they were told there was no Dispute or Review filed. The Court appointed Bailiff enforced the Writ of Possession on August 17, 2016 and just after that, the landlord discovered the Application for Review in their mail. The tenant's goods are safely in storage and may be retrieved by her.

The landlord applies today to confirm the Order of Possession and Monetary Order for $750 for unpaid rent which was granted in the ex parte proceeding. I find the tenant was served with the 10 Day Notice to End Tenancy by posting it on her door on July 6, 2016. I find the tenant filed an Application for Dispute Resolution on July 15, 2016 but I find insufficient evidence that the tenant ever served the landlord with the Application. She did not attend the hearing today and she provided no documents as proof of service. The Residential Tenancy Branch Rules of Procedure 3.1 state the Application must be served within 3 days of the applicant receiving the hearing package from the Branch. I find insufficient evidence that the applicant/tenant served the respondent/ landlord as required. I note that while the Review Hearing found the tenant had

submitted her Application to the Branch, it was not found that she had served it to the landlord. At the ex parte Direct Request proceeding, the landlord applied pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A monetary order pursuant to Sections 46 and 67 for unpaid rent; and
b) An Order of Possession pursuant to sections 46 and 55

The tenant in her Application applied to allow more time to make her application and
(i) to cancel a Notice to End Tenancy for unpaid rent;
(ii) to obtain compensation or rent rebate as compensation damage or loss;
(iii) to allow access to her unit for her and guests;
(iv) to authorize her to change the locks; and
(v) to recover the filing fee.

Issue(s) to be Decided:
Did the landlord prove on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears?

Or is the tenant entitled to any relief? Has she proved on a balance of probabilities that she is entitled to compensation for damage or loss, to obtain a change of locks and to recover her filing fee?

Background and Evidence:
Only the landlord attended this new hearing and was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced June 1, 2015, that rent was $750 a month and a security deposit of $375 was paid. It is undisputed that the tenant did not pay rent for July, 2016. In her Application she said she had a bank issue and was ill.

In the Application, the tenant said she received bizarre complaints and feels that she has been harassed. She did not attend to give details and provided no documentary evidence of harassment.

In evidence is the Notice to End Tenancy for unpaid rent, the Writ of Possession dated August 11, 2016 by the Supreme Court and stamped as enforced by a Court appointed Bailiff on August 17, 2016, the tenancy agreement, statements of the parties, complaint letters from neighbours, extra key requests and the landlord stating she had had a number of keys issued to her, the rent ledger and the Application for Review. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Section 26 of the Act provides that a tenant must pay rent when due whether or not a landlord fulfills their obligations under the Act. I find the tenant did not pay rent for July, 2016 and was legally served with a Notice to End Tenancy. Although the tenant alleged in her Application for Review that she had personally served the landlord with an Application to Dispute the Notice, the landlord today denied receiving her Application. I find the landlord's evidence credible for it is supported by her professional agent who said they received no Application to Dispute and he had tried unsuccessfully to contact the tenant on numerous occasions to make some arrangements but she refused to contact them. Based on lack of service of Dispute, the landlord proceeded on an ex-parte Application. I dismiss the Application of the tenant and find the landlord is entitled to the Order of Possession which they obtained in the ex parte hearing.

I find the tenant does not dispute that she owes rent for July but is making accusations of harassment and not receiving keys. She is also requesting compensation of $1485 for moving expenses, her security deposit and missing money from a break-in. I find her accusations of harassment are based on other tenants writing letters of complaint to the landlord about the conduct of her and her guests. I find the landlord has the responsibility of ensuring the peaceful enjoyment of all the tenants under section 28 of the Act. Although the tenant denies it, I find there were at least five letters from neighbours plus warning letters from the management. I find it illogical that so many individuals would complain if there was no foundation for the complaints. The landlord states one tenant had to move because of the noise. I find the weight of the evidence is that this tenant was significantly disturbing the peaceful enjoyment of others by her and her guests making noises late at night and early in the morning. I find the landlord had the responsibility to inform the tenant of these complaints and request that this behaviour stop. In the matter of the keys, I find the landlord gave the tenant numerous keys but the staff discovered she was giving these keys to unauthorized others to gain entry into the building. I dismiss this portion of her claim.

The tenant accuses the landlord of causing her to lose money through theft because she had to leave her apartment open as she did not have keys. The landlord denies that they refused keys and this caused theft. The landlord states that in March 2016, the tenant told her that her purse was stolen so she had an NSF auto debit on her account for rent. Although requested by the landlord so they could waive late charges, the tenant never supplied a Police report to support her statement. She did not request in writing that a deadbolt be installed although she was aware requests for repairs must be made in writing. On another occasion, the tenant alleged theft and said the thieves had wrecked her china cabinet. The landlord offered immediately to go up, take photos and make a police report but the tenant refused saying she had cleaned it up already. In

June, 2016, the landlord said the tenant wanted to borrow a building entrance key and she complied. However, the landlord found out she was giving keys to friends to enter the building. When she asked for another key, the landlord requested that she fill out a form for a key replacement as is their standard procedure. She was charged for it and received an apartment key, building entrance key and mailbox key. The landlord included the receipt for the keys in evidence. I find the weight of the evidence is that the landlord did not through act or neglect cause loss to the tenant but diligently tried to respond to her requests. I find the landlord did not through act or neglect contribute to any break-in, even if there was one. I dismiss this portion of her claim.

In respect to the tenant's claim for moving expenses and storage, I find her tenancy was legally ended for non payment of rent. A Writ of Possession was legally enforced through a Court Appointed Bailiff. Although the tenant made an Application for Dispute Resolution, I find insufficient evidence that she ever served it on the landlord. The landlord denies ever receiving her Application and I find this credible as they had a professional agent involved. I find they received her Application for Review too late to stop the eviction. However, I find they have her goods safely stored as is their obligation under the Act. She is free to retrieve them. In conclusion, I find no wrong doing on the part of the landlord.

In respect to the security deposit, this was not dealt with in the ex-parte hearing. I leave this to be dealt with in accordance with section 38 of the Act.

Conclusion:

I dismiss the application of the tenant with leave to reapply for the refund of her security deposit in accordance with section 38 of the Act.

The Order of Possession and Monetary Order for $750 issued July 26, 2016 are hereby **confirmed and in full force and effect.**

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: September 09, 2016

Residential Tenancy Branch