



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, 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; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenants were personally served with the landlord's application for dispute resolution hearing package on August 6, 2016, at the rental unit where the tenants are residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on August 6, 2016, the day it was served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on June 1, 2016 on a fixed term. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord testified that the tenants were personally served with the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), dated June 28, 2016, on the same date. The landlord attached a witnessed proof of service, signed on June 28, 2016, with his application. In accordance with section 89 of the *Act*, I find that the tenants were served with the 1 Month Notice on June 28, 2016.

The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The landlord seeks a monetary order of \$2,000.00 for strata fines incurred from June 16, 2016 to July 25, 2016. The landlord claimed that despite warnings the tenants continued to engage in behaviour that resulted in strata fines. The landlord provided a list of amounts the strata had voted to fine the landlord.

The landlord testified to apartment complex damage by his tenants but acknowledged these repairs have not been conducted to date. In relation to the inside of the rental unit, the landlord testified that he has not inspected the rental unit due to the tenant's occupancy.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 47 of the Act provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not 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.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not file an application to dispute the notice within 10 days, 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*.

Based on the landlord's undisputed evidence that the tenants have engaged in behaviour that resulted in strata fines, I find the landlord is entitled to the recovery of the strata fines. Although the landlord seeks \$2,000.00 in strata fines, the documentary evidence indicates the landlord incurred \$1,800.00 in strata fines. Therefore I find the landlord is entitled to the recovery of \$1,800.00 in strata fines.

Although the landlord applied for compensation for damages, I find the claim to those damages premature as the tenants have not vacated the rental unit and the repairs have not been conducted to date. For this reason I dismiss the landlord's application for damages with leave to reapply.

Therefore, I find that the landlord is not entitled to any compensation other than strata fines in the amount of \$1,800.00. 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 \$1,900.00.

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 \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,400.00.

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 \$1,400.00.

I dismiss the landlord's application for a monetary order for damage to the rental unit with 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: September 20, 2016

Residential Tenancy Branch