



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF
CNL, CNR, MNR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. Two landlords have applied as against 2 tenants for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. An amended application for dispute resolution also seeks an order that the landlords be permitted to keep all or part of the pet damage deposit or security deposit.

One of the tenants has applied as against 1 of the landlords for an order cancelling a notice to end the tenancy for landlord's use of property; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for a monetary order for the cost of emergency repairs.

One of the named landlords attended the hearing and represented the other named landlord. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended the call. The landlord testified that one of the tenants was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on November 12, 2016 and has provided proof of such service. The other tenant is deceased and was not served. I find that the tenant served has been served in accordance with the *Residential Tenancy Act*.

Since the tenant has not joined the conference call hearing, I dismiss the tenant's application in its entirety without leave to reapply.

The landlord gave affirmed testimony, and all evidence provided by 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?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began 12 or 13 years ago with one of the named tenants, who passed away recently. The other named tenant is the adult son of the tenant, who moved in about 10 years ago, and still resides in the rental unit. No written tenancy agreement exists, however rent in the amount of \$700.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit but the landlord does not recall the specific amount. The security deposit was \$250.00 or \$275.00 and is still held in trust by the landlords, and no pet damage deposit was collected.

The landlord further testified that the tenant has not paid any rent since his mother passed away and is currently in arrears the sum of \$2,100.00 for the months of October, November and December, 2016. The landlords caused a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenant, a copy of which has been provided. It is dated October 26, 2016 and contains an effective date of vacancy of November 7, 2016 for \$700.00 unpaid rent that was due on October 1, 2016. The landlord's mother served it by placing it in the mail slot of the rental unit on October 26, 2016, and a Proof of Service document has also been provided verifying that testimony.

The tenant has not paid any rent since the issuance of the notice.

Analysis

The *Residential Tenancy Act* 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 given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. Having dismissed the tenant's application, I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I accept the undisputed testimony of the landlord that the tenant has not paid any rent for the months of October to December, 2016, and the landlords are entitled to a monetary order in the amount of \$2,100.00.

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

With respect to the security deposit, the landlord was not able to specify the amount collected from the tenant, and interest may be payable on it. Without knowing the specific amount, I cannot order that the landlords keep it or that it be applied to the unpaid rent. The tenant must provide the landlords with a forwarding address in writing within a year after the end of the tenancy, and if the tenant fails to do so, the landlords may keep the security deposit. If the tenant provides a forwarding address in writing, the landlords will have 15 days to return the security deposit to the tenant or may make an application for dispute resolution claiming against it. I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*, and the landlords' application to keep it is dismissed with leave to reapply.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,200.00.

The landlords' application for an order permitting the landlords to keep the security deposit is hereby dismissed 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: December 14, 2016

Residential Tenancy Branch

