



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding York Lake Equities Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application.

The named landlord attended the hearing, gave affirmed testimony and represented the landlord company. The tenant also attended the hearing, gave affirmed testimony and was accompanied by his wife who also gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions.

The landlords have also provided evidentiary material, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the question of jurisdiction was raised, which is an additional issue to be decided.

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 tenant for unpaid rent?
- Does the *Residential Tenancy Act* apply to this dispute?

Background and Evidence

The landlord testified that she had a discussion with the tenant to renovate the rental unit, and the parties agreed that the tenant could stay in the rental unit during renovations from September through November, 2016 without paying rent, and the rental unit had to be ready to rent for December 1, 2016. The tenant wanted to rent and

the landlord agreed but specified that the rental period would have to commence on December 1, 2016. The landlord gave the tenant a rental application to complete, but the tenant didn't return it to the landlord.

The tenant was told that rent in the amount of \$775.00 was payable, and the tenant was also supposed to pay a security deposit in the amount of \$387.50 but the tenant told the landlord he could only afford \$200.00 and would pay the balance at a later date. However the tenant didn't pay anything for a security deposit, and actually started to live there in October, 2016, and still resides in the rental unit with his girlfriend. The landlord is a property manager and the owner told the landlord that rent would be \$1,000.00 per month. The tenant has not paid any rent or any part of the security deposit.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 12, 2016 by posting it to the door of the rental unit. A copy has been provided and it is dated December 12, 2016 and contains an effective date of vacancy of December 25, 2016 for unpaid rent in the amount of \$1,000.00 that was due on December 1, 2016. Also provided is a Proof of Service document showing that method of service, signed by the landlord and by a witness.

The tenant has not served the landlord with an application for dispute resolution disputing the notice and has not paid any rent since it was issued.

After filing the Landlord's Application for Dispute Resolution on December 21, 2016 the landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, again by posting it to the door of the rental unit. A copy has been provided and it is dated January 3, 2017 and contains an effective date of vacancy of January 16, 2017 for unpaid rent in the amount of \$1,000.00 that was due on January 1, 2017. Also provided is a Proof of Service document confirming that testimony which is also signed by a witness.

The tenant has not served the landlord with an application for dispute resolution disputing the notice and has not paid any rent since it was issued.

The landlords have also provided a Monetary Order Worksheet setting out a claim of \$3,000.00 for rent for December, 2016; January, 2017 and February, 2017.

The tenant's witness testified that she is the wife of the tenant and back in September, 2016 the parties talked about renovations to the rental unit and the possibility of moving in. The tenant had to go to Calgary to pick up his wife and they arrived on October 4, 2016 living with the tenant's father who also worked for the landlord.

The tenant and his wife were supposed to move into the rental unit in mid-October, but due to some drama, the landlord didn't want the tenant to move in. The tenant and his wife had some things in the rental unit, and the landlord advised toward the end of October, 2016 that they could move in, which they did on October 31, 2016. The landlord gave the tenant an application to rent which the tenant completed and still has in his possession.

On November 9, 2016 the landlord arrived to get the application for rent and to drop off some flooring, and fired the tenant.

The free rent was to commence on November 1, 2016 in exchange for doing renovations. If the tenancy was going alright and renovations were being done, the tenant would sign a lease for a tenancy to commence on February 1, 2017 to expire at the end of the calendar year.

On December 1, 2016 the landlord arrived, but didn't knock on the door; just started drilling the door. The witness told the landlord that a tenant can't be evicted by text message, and the witness wanted the landlord to serve a proper notice to end the tenancy so the witness could give it to a Government Ministry for the payment of rent.

The witness denies receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but received only an empty envelope.

The witness went to the Residential Tenancy Branch to provide evidence for this hearing but was told that a \$100.00 filing fee was required, which neither the tenant nor the tenant's wife had.

The tenant testified that he has completed some renovations and hasn't been paid. The parties had agreed to 3 months of free rent for the work which was to commence in November, 2016. On November 9, 2016 the landlord arrived, got really mad at the tenant, fired the tenant and evicted the tenant. The tenant kept forgetting to give the landlord the application to rent.

The tenant denies receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

With respect jurisdiction, it is clear that the tenant never did return the completed application to rent to the landlords. It is also clear that the parties had a discussion

about a tenancy, and that the tenant and his girlfriend reside in the rental unit. The parties also agree that rent was to be free for a time, but the dates are in dispute.

A verbal agreement is just as binding as a written agreement; it's just harder to prove. However, the *Residential Tenancy Act* states that whether or not it's in writing, a tenancy exists by virtue of a tenant residing in a rental unit in exchange for rent. I am satisfied in the circumstances that the tenant agreed to pay rent, and therefore a tenancy exists, and the *Residential Tenancy Act* applies.

The *Act* permits a landlord to serve a notice to end a tenancy by posting it to the door of the rental unit. The tenant's witness testified that all that was received was an empty envelope, and the tenant testified that no notice to end the tenancy was received, but testified that the landlord evicted the tenant. I take it that the tenant meant that the landlord told the tenant to move out. The tenant's witness also testified that upon speaking to someone at the Residential Tenancy Branch, they learned that the tenant had to pay \$100.00 to file evidence and the tenant didn't have the money. I do not accept that testimony because filing evidence requires no fee. A fee of \$100.00 is required to file an application for dispute resolution. I find that the tenant intended to file a dispute to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and didn't do so because the tenant didn't have the fee.

I have reviewed the Proof of Service documents and I accept the testimony of the landlord that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 12, 2016 was served on December 12, 2016 by posting it to the door of the rental unit, which is deemed to be served 3 days later, or December 15, 2016.

The landlord served a second notice to end the tenancy for unpaid rent for January, 2017 which has also not been disputed by the tenant.

The *Act* also states that once served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant has not paid any rent and has not disputed either notice and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy on the first notice has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the landlords' monetary claim, I am not satisfied that the parties agreed to \$1,000.00 per month for rent, regardless of what the owner told the landlord. In the

circumstances, I accept that rent would be paid commencing December 1, 2016 in the amount of \$775.00, and the landlords are entitled to recover 2 month's rent for December, 2016 and January, 2017, totalling \$1,550.00. I am not satisfied that the landlord will not be able to re-rent for February, 2017 and I decline to order loss of rental revenue for that month.

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

Conclusion

For the reasons set out above, 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 \$1,650.00.

This order is 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: January 19, 2017

Residential Tenancy Branch