



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MND, MNDC, MNSD, FF
CNR, CNC, MNSD, OLC, RP

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities and for cause; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; 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 landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order cancelling a notice to end the tenancy for cause; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the unit, site or property.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord testified that he served the tenant with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on December 1, 2016 and orally provided a tracking number.

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

Since the tenant has also made an application and is aware of the date and time of this hearing, I accept the testimony of the landlord that the tenant was served by registered mail on December 1, 2016, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the payment of Strata fines, loss of rental revenue and property management fees?
- Should the landlord 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 fixed term tenancy began on August 22, 2016 and expires on August 22, 2017 after which it reverts to a month-to-month tenancy. The tenant sent a text message to the landlord saying that the tenant had moved out of the rental unit on December 15, 2016 but has not returned the keys.

Rent in the amount of \$1,850.00 per month is payable on the 22nd day of each month. The tenant is in arrears of rent the sum of \$437.50 for October and has not paid any rent for November or December, 2016. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 6, 2016, a copy of which has been provided. It is dated November 6, 2016 and contains an effective date of vacancy of November 19, 2016 for unpaid rent in the amount of \$437.50 that was due on October 22, 2016. The landlord claims those amounts as well as loss of rental revenue for January, 2017.

Also provided is a 1 Month Notice to End Tenancy for Cause dated November 6, 2016 containing an effective date of vacancy of December 9, 2016. The reason for issuing it states that the tenant is repeatedly late paying rent.

The rental unit is an apartment within a Strata complex and a copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$925.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord has also provided a Monetary Order Worksheet setting out the following claims:

- \$1,000.00 for Strata fines;
- \$437.50 for overdue rent for October, 2016;
- \$1,850.00 for overdue rent for November, 2016;
- \$1,850.00 for overdue rent for December, 2016;
- \$1,850.00 for rent for January, 2017;
- \$12,950.00 for loss of income;
- \$289.40 for unpaid utilities, and future unpaid utilities;
- Interest at 10% for the Strata fines; and
- \$1,850.00 for rental agent fees.

The landlord further testified that the tenant has been fined \$1,000.00 by the Strata for multiple noise complaints. The fines are \$200.00 each for which there are 5, and now an additional fine of \$200.00 has been levied from an incident on December 8, 2016. Police were called, and the tenant sent threatening messages to the person who made the complaint and also threatened to break things in the rental unit. The landlord claims \$1,200.00 in Strata fines that the landlord will have to pay, in addition to interest of 10% which the Strata also charges. Copies of letters addressed to the landlord from the Strata have been provided. All are dated November 8, 2016 stating that a \$200.00 fine has been levied against the rental unit for a noise infraction incident that occurred on November 1 to November 2, 2016. Another states that another \$200.00 fine has been levied against the rental unit for a noise infraction incident that occurred on November 2 to November 3, 2016. Another also imposes a \$200.00 fine for an infraction November 3 to November 4, 2016, and again November 4 to November 5, 2016.

The landlord also testified that the tenant owes \$289.40 for hydro, which is not included in the rent. Bills have been provided in the amount of \$154.34 from October 28 to November 23, 2016 and \$135.06 for August 27 to October 27, 2016.

The landlord advertised the rental unit for rent on Craigslist on December 15, 2016 after hearing from the tenant. The advertisement shows that it is available for after January, 2017.

The landlord also intends to hire a property manager, and their fee is \$925.00 for a finder's fee and \$100.00 per month. The landlord claims \$1,850.00 as against the tenant for those fees.

The landlord also claims \$200.00 for cleaning and has provided digital evidence to show the condition of the rental unit. The landlord completed a move-in condition inspection

in the absence of the tenant, but no move-out condition inspection report was completed.

The tenant has not provided the landlord with a forwarding address in writing.

Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end the 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 notices and find they are both in the approved form. Having dismissed the tenant's application, I grant an Order of Possession in favour of the landlord. Since the effective dates of vacancy of the notices have expired, I grant the Order of Possession effective immediately.

With respect to the landlord's claim for unpaid rent, I accept the undisputed testimony of the landlord that the tenant owes \$437.50 for October and \$1,850.00 for November, 2016. The landlord testified that the tenant moved out of the rental unit on December 15, 2016, and any notice that the tenant may have given after the landlord issued the notices to end the tenancy would not have taken effect before the end of December, 2016 and I find that the tenant is liable for \$1,850.00 for December.

With respect to loss of rental revenue, I am not satisfied that the landlord will not be able to re-rent before January 15, 2017, and considering that the parties signed a fixed-term tenancy, I grant a monetary order for half of January's rent, or \$925.00.

I am not satisfied that the landlord's intention of hiring a property manager is a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the landlord's claim.

With respect to damages, the landlord testified that a move-in condition inspection report was completed in the absence of the tenant and that no move-out condition inspection report was completed at the end of the tenancy. The landlord has provided digital evidence, but has not complied with the *Act* or the regulations with respect to providing evidentiary material that satisfies me of the condition of the rental unit at the beginning of the tenancy, and I dismiss the landlord's claim for cleaning.

I have reviewed the Strata fines imposed on the rental unit during the tenancy, and I am satisfied that the landlord will be required to pay \$1,200.00, and I grant that amount to the landlord. However, there is no mention in the Strata letters of interest charged on those amounts, and I decline to order interest.

I have also reviewed the hydro bills, and I accept the undisputed testimony of the landlord that the tenant hasn't paid any portion of them. The tenancy agreement clearly indicates that hydro is not included in the rent, and I find that the landlord has established the claim totalling \$289.40.

In summary, I find that the landlord is entitled under the *Act* to an Order of Possession, and that the landlord has established claims of \$437.50 for October's rent; \$1,850.00 for November's rent; \$1,850.00 for December's rent; \$925.00 for loss of rental revenue for January, 2017; \$289.40 for hydro bills; \$1,200.00 for Strata fines, for a total of \$6,551.90.

The landlord's claim for loss of further rental revenue and for property management fees and for cleaning are dismissed. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I hereby order the landlord to keep the \$925.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$5,726.90.

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 immediate Order of Possession in favour of the landlord.

I further order the landlord to keep the \$925.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,726.90.

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 05, 2017

Residential Tenancy Branch