



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNSD, FF, RP, RR, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants have applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The landlord gave sworn testimony that he served the tenants with his application on December 22, 2016 by personally serving JP. The landlord advised that he was unaware that the tenants have filed an application and that he has not received any documentation to that effect. The tenants filed their application first and initiated the

dispute resolution process. I am satisfied that they were aware of today's hearing and I am also satisfied based on the landlords sworn testimony, that they have been served the landlords application and evidence. It is also worth noting that the tenants filed their application to dispute the notice to end tenancy 39 days after receiving it. As the tenants chose not to participate in today's hearing or submit any documentation, I dismiss their application in its entirety.

Preliminary Issue

At the outset of the hearing the landlord advised that he wished to withdraw the monetary portion of his claim and deal with it after the tenancy is concluded. I grant the landlords request and the monetary portion of his application is withdrawn and is granted leave to reapply.

Issues to Decide

Is the landlord entitled to an Order of Possession?

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

Background and evidence

The tenancy began on or about May 1, 2015. Rent in the amount of \$900.00 is payable in advance on the first day of each month. The landlord testified that the parties have a verbal tenancy agreement. The landlord testified that the tenants are continually late in paying the rent. The landlord testified that the tenants have been late every month for the past year. The landlord testified that he has attempted to work with the tenants but to no avail. The landlord testified that on October 27, 2016 he served the tenants a One Month Notice to End Tenancy for Cause on the basis that the tenants have repeatedly paid rent late.

Analysis

When a landlord issues a notice under section 47 of the Act they bear the burden to provide sufficient evidence to support the issuance of that notice. The landlord submitted three 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to support his claim as well as undisputed testimony that the tenants' have been late in paying every month for the past year. Residential Tenancy Policy Guideline 38 addresses the issue before me as follows:

The *Residential Tenancy Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. I find that the tenants have been repeatedly late in paying rent.

Based on the above, the landlords' undisputed testimony, and the documentary evidence before me, the landlord is granted an Order of Possession pursuant to Section 55 of the Act, which must be served on the tenant(s).

As the landlord has been only partially successful in his application he must bear the cost of filing this application.

Conclusion

The landlord is granted an order of possession.

The tenants' application is dismissed in its entirety.

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 10, 2017

Residential Tenancy Branch