



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPM, MNR, MND, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for cause and for the parties mutually agreeing in writing to end the tenancy; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords attended the hearing, gave affirmed testimony and also 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 the tenants were each served with the Landlord Application for Dispute Resolution and notice of this hearing on December 6, 2016 by Express Post requiring a signature, and the landlords have provided copies of Canada Post cash register receipts bearing that date as well as 2 Express Post Receipts addressed to each of the named tenants, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 1, 2016 and the tenants still reside in the rental unit. Rent in the amount of \$1,025.00 per month was payable on the 1st day of each month according to the tenancy agreement, however that included WiFi, and the landlords disconnected the WiFi on December 1, 2016 because they could no longer afford to pay it while the tenants were not paying rent, and the landlords expected rent to decrease to \$1,000.00 effective December 1, 2016. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

The landlord further testified that the tenants only paid \$520.00 on November 7, 2016 for November's rent, leaving \$505.00 outstanding. The tenants promised to pay the balance but didn't. The tenants have not paid any rent since, and are now in arrears an additional \$1,000.00 for December, 2016 and \$1,000.00 for January, 2017. Numerous text messages have been provided wherein the tenants promise to pay rent.

On November 1, 2016 the landlords personally served one of the tenants with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated November 1, 2016 and contains an effective date of vacancy of December 1, 2016. The reason for issuing it states that the tenants are repeatedly late paying rent. The landlords have not been served with an application for dispute resolution by the tenants disputing the notice. Also, one of the tenants signed a Mutual Agreement to End the Tenancy, a copy of which has also been provided. It is dated November 1, 2016 and also contains a signature of a landlord. It states that the parties agree to end the tenancy effective December 1, 2016, but the tenants have not vacated the rental unit.

The landlords have provided a Monetary Worksheet setting out the following claims:

- \$505.00 for the balance of November, 2016 rent;
- \$1,000.00 for December, 2016 rent;
- \$31.00 Natural Gas for October and November, 2016;
- \$94.0 BC Hydro for October and November, 2016;
- An unknown amount for Natural Gas for December, 2016;
- \$100.00 for the filing fee for this application; and
- \$27.83 for postage.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant who is served with a 1 Month Notice to End Tenancy for Cause has 10 days to dispute it by filing and serving the landlord with an application for dispute resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the tenants have not served the landlords with an application for dispute resolution, and I have no such application before me. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlords are entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlord that the tenants are in arrears of rent the amount of \$505.00 for November, 2016, \$1,000.00 for December, 2016 and \$1,000.00 for January, 2017, for a total of \$2,505.00, and I grant a monetary order in favour of the landlords for that amount.

The landlords currently hold a security deposit in the amount of \$500.00 but have not applied to keep it in partial satisfaction of the claim. The landlords have not provided copies of the utility

bills, and I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*. If the tenants do not provide the landlords with a forwarding address in writing, the landlords do not have to return the security deposit. If the tenants provide a forwarding address in writing, the landlords will have 15 days from the later of the date the tenants move out or the date the landlords receive the forwarding address in writing to return the security deposit or to make an application for dispute resolution claiming against it for unpaid utilities or for partial satisfaction of the claim for unpaid rent.

The landlords have not led any evidence respecting damages and I dismiss that portion of the application.

The *Residential Tenancy Act* does not provide for recovery of the costs of serving the tenants, however, since the landlords have been partially successful with the application the landlords are also entitled to recovery of 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 tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,605.00.

These orders are 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 10, 2017

Residential Tenancy Branch