



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF – Landlord’s application

CNR DRI OLC PSF RP FF – Tenant’s application

Introduction

This hearing was convened to hear matters pertaining to two Applications for Dispute Resolution. One filed by the Landlord on December 19, 2016 listing both Tenants as respondents. The other application was filed listing only the female Tenant as applicant.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and/or utilities; and to recover the cost of the filing fee.

The Tenant filed seeking to cancel a 10 Day Notice for unpaid rent; to dispute a rent increase; to Order the Landlord to: comply with the *Act*, regulation, or tenancy agreement; to provide services or facilities required by the tenancy agreement or law; and to make repairs to the unit, site or property.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant’s application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant’s request to cancel the Landlord’s Notice to End Tenancy issued for unpaid rent and I dismiss the balance of the Tenant’s application with leave to reapply.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

As per the tenancy agreement submitted into evidence by the Landlord the respondents to the Landlord's application for Dispute Resolution were both signatories to the tenancy agreement as Tenants. Therefore, the style of cause of this Decision lists both Tenants. In addition, as both Tenants made submissions during this hearing, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise, for the remainder of this Decision.

Each party confirmed receipt of the application and notice of hearing documents served by the other party. The Tenants confirmed receipt of the Landlord's evidence and no issues regarding service or receipt of that evidence were raised. As such, I accepted the Landlord's submissions as evidence for this proceeding. The Tenants confirmed they had not submitted documentary evidence.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Should the 10 Day Notice to end tenancy (the Notice) issued December 2, 2016 be upheld or cancelled?
- 2) If upheld, has the Landlord proven entitlement to an Order of Possession?
- 3) Has the Landlord proven entitlement to a monetary order for unpaid utilities and unpaid rent?
- 4) Is the Landlord entitled to payment for use and occupancy of the rental unit after the effective date of the Notice to end tenancy?

Background and Evidence

The undisputed evidence included that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 1, 2016. As per the tenancy agreement the Tenants were required to pay rent of \$2,200.00 on the first of each month. On August 2, 2016 the Tenants paid \$1,100.00 as the security deposit. The utility costs were not included in the payment of rent.

The Landlord submitted that when the Tenants failed to pay their November and December 1, 2016 rents in full, the Landlord personally served the Tenants with a 10 Day Notice on December 2, 2016. That 10 Day Notice was submitted into evidence and

listed an effective date of December 12, 2016 and unpaid rent of \$2,200.00 that was due December 1, 2016.

In addition, the Landlord submitted the following. A copy of a municipal utility bill issued November 21, 2016 was submitted into evidence. The amount owed on that bill was \$149.62 if paid after December 21, 2016. I heard the Landlord say he served the Tenants with the municipal bill sometime around the second week of December 2016. He stated he checked with municipality and the bill remains unpaid.

I heard the Landlord stated the Tenants paid \$2,200.00 towards the outstanding November and December 2016 rents on January 3, 2017 leaving an outstanding balance owed of \$200.00. The Landlord further submitted that the Tenants have not paid the \$2,200.00 January 1, 2017 rent or the outstanding municipal utility bill. As such the Landlord sought an Order of Possession and Monetary Order for the utilities and unpaid rent of \$2,549.62.

I heard the Tenants state they paid \$1,000.00 on November 8, 2016 plus \$1,000.00 in December towards the November 1, 2016 rent, which left a balance due of \$200.00. The Tenants stated they had rented the entire house with permission to sublet the basement suite and when their sublet arrangements did not work out they found themselves unable to pay their rent on time. They confirmed their January 1, 2017 rent had not yet been paid.

The Tenants confirmed receipt of the municipal utility bill and argued they received that bill after they were served the 10 Day Notice. The Tenants asserted they had never lived in a place where they had to pay a municipal water bill before. They stated they did not know how they were to pay that bill as it was issued in the Landlord's name.

The parties were given the opportunity to try and settle these matters. However, the parties were too far apart and the Landlord wished to proceed with his application as filed.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 46 (1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the *Act* and I find that it was served upon the Tenants in a manner that complies with section 88 of the *Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator; or expenditures incurred to make an "emergency repair", as defined by the *Act*.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case the Tenants received the 10 Day Notice on December 2, 2016, and filed their application for Dispute Resolution December 6, 2016 within the stipulated timeframe. The irrefutable evidence was the Tenants failed to pay their rent in full on the first of December 2016, in breach of section 26 of the *Act*.

In addition, the Tenants failed to pay their rent in full by December 7, 2016, five days after receipt of the 10 Day notice. Accordingly, I find the Tenants' submitted insufficient evidence to prove the 10 Day Notice should be cancelled. As such, I dismiss the Tenant's application to cancel the Notice, without leave to reapply and I uphold the Landlord's request for an Order of Possession.

As the Tenants were not successful with their application, I declined to award recovery of their filing fee.

Based on the above, the Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I grant the Agent's request to amend the application to include the unpaid rent for January 2017 as per Rule of Procedure 4.2 which provides that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlord claimed accumulated unpaid from 2016 in the amount of \$200.00, in accordance with section 26 of the *Act*. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for December 2016 in the amount of **\$200.00**, pursuant to section 67 of the *Act*.

As noted above, this tenancy ended **December 12, 2016**, the effective date of the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and any loss of rent for January 2017, not rent.

I have considered that the Tenants continue to occupy the rental unit and the Landlord will not regain possession until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*. I have also considered the Landlord will need to ready the unit and advertise for new tenants. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the full month of January 2017 in the amount of **\$2,200.00**, pursuant to section 67 of the *Act*.

The undisputed evidence include that the Tenants were required to pay for utilities as per the tenancy agreement. The Tenants were served a copy of the municipal utility bill by the second week of December 2016 and that bill remains unpaid. As such, I grant the Landlord's request for unpaid utilities in the amount of **\$149.62**, pursuant to section 67 of the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee, pursuant to sections 67 and 72 of the Act.

Based on the above, the Tenants are hereby ordered to pay the Landlord **\$2,649.62** (\$200.00 + \$2,200.00+ \$149.62 + \$100.00), forthwith.

In the event the Tenants do not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$2,649.62** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlord was successful with their application and was issued an Order of Possession and a monetary award of \$2,649.62. The Tenant's application to dispute the Notice and recover their filing fee was dismissed, without leave to reapply.

This decision is final, legally binding, and 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 13, 2017

Residential Tenancy Branch