



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord 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 landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant was accompanied by 2 people, one of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

During the course of the first scheduled date of the hearing, the parties agreed to discuss settlement of this dispute and I adjourned the hearing.

The landlord attended the hearing on the second scheduled date however the line remained open while the phone system was monitored for 10 minutes and no one for the tenant joined the call.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began almost a year ago and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord and no pet damage deposit was collected. The parties did not

sign a written tenancy agreement, and the landlord testified that the tenant didn't ask for one and the landlord trusted him.

The landlord further testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 13, 2016, a copy of which has been provided. It is dated December 13, 2016 and contains an effective date of vacancy of December 23, 2016 for unpaid rent in the amount of \$600.00 that was due on December 1, 2016. The tenant has not paid any rent since the issuance of the notice and has not served the landlord with an application for dispute resolution disputing the notice.

The tenant paid \$650.00 for rent for October, November and December, 2016, leaving \$200.00 for each of those months owed to the landlord. In September, 2016 the tenant paid \$850.00, but has not paid any rent for January, 2017 and is now in arrears of rent the sum of \$1,450.00. The tenant's witness lives in the rental unit with the tenant and another person, and each of them told the landlord they have been paying rent to the tenant, but didn't say how much.

The tenant testified that he moved into the rental unit in February, 2016 and the parties had agreed to \$650.00 per month for rent. When someone else was living with the tenant the landlord was paid \$850.00. The tenant also offered to pay the rent for January, 2017 of \$650.00 but the landlord refused it saying that he didn't want the rent and he wants the tenant to move out. No one else currently resides in the rental unit, but the tenant has 2 guests.

The tenant's witness testified that she witnessed the landlord serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities a couple of days after December 13, 2016. Once the hearing package for this hearing was served, the witness went to the Residential Tenancy Branch who advised that the tenant would have to pay \$100.00 to dispute the notice, but the tenant didn't have the money.

The witness also testified that she has been living in the rental unit for a couple of months, and visited for awhile. The tenant pays \$650.00 per month for rent, or \$850.00 per month for 2 people residing there. The witness was not there in September, only during October and November for a few weeks and in December, 2016. The landlord attends at the rental unit to collect rent.

In rebuttal, the landlord testified that he told the tenant he only had to pay \$650.00 because he was living in the rental unit alone, but he lied. Rent was \$850.00 per month from the beginning of the tenancy and the landlord only agreed to reduce rent to \$650.00 when the tenant said he lived there alone, but he wasn't.

On the second scheduled date of the hearing, the tenant didn't attend, and the landlord advised that the parties had met and signed a Mutual Agreement to End Tenancy effective January 31, 2017, and the landlord told the tenant that no further rent was payable. The landlord was given the opportunity to provide to me by facsimile a copy of the Mutual Agreement to End Tenancy which I have received. It states that the parties agree to end the tenancy at 2:00 p.m. on the 31st day of January, 2017 and adds: "This deal means the tenant don't have to pay anything to Landlord."

Analysis

I advised the landlord that since there is no tenancy agreement and no evidence from the tenant, I have nothing to compare the tenant's signature on the Mutual Agreement to End Tenancy to. However, the *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full or dispute the notice within 5 days of receipt of the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant has not disputed the notice by filing and serving the landlord with an application for dispute resolution. 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 landlord relies on the Mutual Agreement to End Tenancy, I find it appropriate to grant the Order of Possession effective January 31, 2017 at 2:00 p.m.

Further, I am not satisfied how much rent was agreed to be at the beginning of the tenancy. A landlord may not change the amount of rent payable under a tenancy agreement without the express consent of the tenant, and a tenancy agreement exists even if it's not in writing. The parties agree that the amount of rent payable changed, and I am not satisfied that the parties agreed to \$850.00 per month. The landlord has not provided any receipts, tenancy agreement, or tenant ledger to substantiate any amount, and the amount claimed is disputed by the tenant. I find it equally as possible that the parties agreed to \$650.00 per month at the beginning of the tenancy and the landlord wanted more money when the tenant had others living there. Since the landlord relies on the Mutual Agreement to End Tenancy for no rental arrears and no payment to the landlord, I dismiss the landlord's application for a monetary order for unpaid rent and for recovery of the filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective January 31, 2017 at 2:00 p.m. and the tenancy will end at that time.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for recovery of the filing fee is hereby dismissed without leave to reapply.

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 26, 2017

Residential Tenancy Branch