



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF – Landlord’s application
 CNR MNDC RR FF – Tenants’ application

Introduction

This hearing was scheduled to hear applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on January 12, 2017 seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee.

The Tenants filed on January 11, 2017 seeking an Order to cancel the 10 Day Notice to end tenancy for unpaid rent; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, and both Tenants were present in the room with only the female Tenant on the telephone. The Landlord and female Tenant gave a solemn affirmation. The Tenant stated she would be speaking on behalf of both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

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.

Each person confirmed receipt of the application for Dispute Resolution, hearing documents and evidence served by the other. The Landlord submitted that he had not served evidence upon the Tenants and that he was not able to view the contents of the USB drive served by the Tenants. The Tenant confirmed they had not contacted the Landlord to determine if he was able to view the contents on their USB.

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 applications before, I have determined that I will not deal with all the dispute issues placed on the applications. For disputes to be combined on an application they must be related. Not all the claims on these applications are sufficiently related to the main issue relating to the 10 Day Notice to end tenancy for unpaid rent. Therefore, I will deal with the issues relating to the 10 Day Notice to End Tenancy; possessions of the rental unit; claims for non-payment of rent; and I dismiss the balance of the applications with leave to re-apply.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make submissions relevant to the 10 Day Notice. 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 issued January 3, 2017 be upheld or cancelled?
2. If upheld, is the Landlord entitled to an Order of Possession?
3. Has the Landlord proven entitlement to a Monetary Order for nonpayment of rent and use and occupancy?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on August 1, 2016. The Tenants were required to pay rent of \$1,800.00 on the first of each month and on July 11, 2016 the Tenants paid \$900.00 as the security deposit.

The Landlord submitted evidence that when the Tenants failed to pay their January 1, 2017 rent he served them with a 10 Day Notice for unpaid rent by placing it in their mail slot.

The Landlord testified the Tenants continue to occupy the rental unit and have not paid the January 1, 2017 or February 1, 2017 rents. The Landlord now seeks an Order of Possession and the two months unpaid rent of \$3,600.00.

The Tenant confirmed that they continue to reside in the rental unit and have not paid rent for January or February 2017. I heard the Tenant state they do not have an Order issued by the Residential Tenancy Branch (RTB) allowing them to withhold their rent. The Tenant confirmed they had not paid to have any emergency repairs completed and argued that the house is scheduled to be demolished so they were not going to pay to

repair anything. The Tenant asserted they had not paid their rent because they were seeking an order for reduced rent.

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:

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.

In this case the Tenants are deemed to have received the 10 Day Notice on January 6, 2017; three days after it was put in their mail slot. They filed an application to dispute that Notice on January 11, 2017, five days later. Therefore, the effective date of the Notice would automatically correct to **January 16, 2017**, ten days after it was received.

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*.

I conclude the Tenants had no legal right to withhold their payment of rent as they did not have an order issued by the RTB and did not pay for emergency repairs. Accordingly, I find the Tenants' application to dispute the 10 Day Notice to be meritless and it is dismissed, without leave to reapply.

Based on the above, I find the Landlord's application to have merit and 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.

It was undisputed that rent of \$1,800.00 was due on the first of each month. The Landlord had entitlement to the payment of rent and at the very least payment for use and occupancy of the rental unit pending the outcome of this hearing which was not scheduled to be heard until February 9, 2017. The Tenants did not pay for January or February 2017 which I find to be in breach of section 26 of the Act. The Landlord will not regain possession until after service of the Order of Possession and will then have to

ready the unit and find replacement tenants. Therefore, I grant the Landlord's application for unpaid rent and use and occupancy for the full months of January and February 2017, in the amount of **\$3,600.00** (2 x \$1,800.00), 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 succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenants are hereby ordered to pay the Landlord the amount of **\$3,700.00** (\$3,600.00 + \$100.00), forthwith. In the event the Tenants do not comply with that order, The Landlord has been issued a Monetary Order in the amount of **\$3,700.00** which may be enforced through Small Claims Court upon service to the Tenants.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord was successful with his application and was awarded an Order of Possession and a **\$3,700.00** monetary order. The Tenants application was dismissed in its entirety.

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: February 09, 2017

Residential Tenancy Branch