



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O
MT, CNR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants, which have been joined to be heard together. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

One of the named landlords and both tenants attended the hearing. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenants be permitted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 15, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$925.00 per month is currently payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment within a complex containing approximately 12 units, and a copy of the tenancy agreement has been provided.

The landlord further testified that the tenants are in arrears of rent the sum of \$121.93 for November, 2016 and have not paid any rent for December, 2016 or for January or February, 2017 and are currently in arrears of rent the sum of \$2,896.93, as well as \$10.98 for electricity.

The landlords caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 5, 2017 by personally handing it to one of the tenants. A copy has been provided and it is dated January 5, 2017 and contains an effective date of vacancy of January 15, 2017 for unpaid rent in the amount of \$1,982.91 that was due on January 1, 2017. The amount includes the \$10.98 utility bill, but a copy has not been provided. The landlords have provided a Proof of Service document confirming that the tenant was personally served on January 5, 2017 and contains a signature of the tenant acknowledging receipt.

The tenants currently owe \$121.93 for November; \$925.00 for December; \$925.00 for January; and \$925.00 for February, 2017, in addition to the utility bill. The landlords seek to keep the security deposit in partial satisfaction and recover the \$100.00 filing fee.

The tenant testified that he went to the Residential Tenancy Branch to file the application for dispute resolution on January 10, 2017 but it was after closing hours, so the tenant returned on January 11, 2017 and filed the dispute.

The tenants do not dispute the amount owing, but ran into financial difficulty, and when the same happened last year, the landlord who did not attend this hearing was patient and all arrears were paid. The tenants are responsible persons and intend to pay in full.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in that notice, which must be no less than 10 days after service. In this case, I am satisfied that the tenants were served with the notice on January 5, 2017 and did not dispute it until the 6th day. I accept the testimony of the tenant that when he arrived at the Residential Tenancy Branch on January 10, 2017 it was closed and that the dispute was in fact filed on January 11, 2017. However, the tenants have not paid the rent. The tenants do not dispute that rent is owed, and I find that the tenants have no legal reason to not have paid the rent and I dismiss the tenants' application. I further find that the landlords are entitled 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.

The landlords have not provided any evidence of the cost of the utility bill, and I dismiss that portion of the application. However, I accept the undisputed testimony of the landlord that the tenants are in arrears of rent the sum of \$2,896.93 for November, 2016 through February, 2017.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I hereby order the landlords to keep the \$450.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants for the difference in the amount of \$2,546.93.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I further order the landlords to keep the \$450.00 security deposit in partial satisfaction of the claim, and I grant a monetary order I favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,546.93.

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: February 14, 2017

Residential Tenancy Branch