



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The landlords had named two tenants in their application and hearing packages were sent to each tenant via registered mail on January 25, 2017. Only the female tenant appeared at the hearing; however, she confirmed that she was representing both tenants.

The landlords requested that the monetary claim be increased to include loss of rent for February 2017. I confirmed that the tenants remain in possession of the rental unit. The tenant did not object to the landlord's request. Since the tenants have continued to benefit from occupancy of the rental unit I found the landlord's request non-prejudicial and I amended the claim.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and loss of rent for January 2017 and February 2017?

Background and Evidence

The one year fixed term tenancy commenced June 1, 2016 and was set to expire on May 31, 2017. The tenants paid a security deposit of \$750.00 and are required to pay rent of \$1,500.00 on the first day of every month.

On January 6, 2017 the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$1,600.00 was outstanding as of January 1, 2017 and an

effective date of January 16, 2017. The amount of \$1,600.00 represents \$100.00 outstanding from December 2016 and \$1,500.00 for January 2017. The landlord testified that the 10 Day Notice was served in person by the landlord's agent on January 6, 2017. The tenant testified that the 10 Day Notice was found on the door of the rental unit on January 7, 2017.

After serving the 10 Day Notice the tenants made three payments, as follows: \$650.00 on January 13, 2017; \$350.00 on January 18, 2017; and, \$300.00 on January 20, 2017 leaving \$300.00 outstanding for January 2017. It was also undisputed that the landlords have not received any monies from the tenants for the month of February 2017.

The landlords seek an Order of Possession effective as soon as possible and a Monetary Order for \$1,800.00 in unpaid and/or loss of rent for January 2017 and February 2017. The landlords did not seek authorization to retain the security deposit and stated that it shall be administered at a later date in accordance with the Act.

The tenant raised the following points:

1. The tenants were not provided a service address for the landlords to which they could send post-dated cheques or direct deposit information as they had requested.
2. The tenant withheld \$300.00 from rent because she ordered a new fireplace remote. The tenant acknowledged; however, that she has not yet paid for the remote.
3. The tenants paid \$650.00 to have the septic tank pumped earlier in the tenancy. The tenant acknowledged that she has not provided the landlords a receipt for this expenditure.
4. The tenants repaired two baseboard heaters recently because they had stopped working although receipts have not been provided to the landlords.

The landlord responded as follows:

1. The landlords have not provided their banking information to the tenants but they have an agent who lives next door to the rental unit.
2. The landlords discussed replacing the fireplace remote with the tenant but did not reach a final decision on the matter.
3. The septic pumping amount of \$650.00 was already deducted from July 2016 rent with the landlord's authorization even though the tenants have yet to produce a receipt for the expenditure despite the landlord's requests for the receipt.

4. The landlords were unaware that any baseboards heaters stopped working and the issue should have been raised with their agent.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement., unless the tenant has a legal right to withhold rent. I have determined the tenants did not have a legal right to withhold rent that was due to the landlords in December 2016 and January 2017 when the 10 Day Notice was issued. My reasons for this finding are provided later in this analysis.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Giving the tenant the benefit of the conflicting testimony, I accept that the 10 Day Notice was received by the tenants on January 7, 2017. Accordingly, the tenants had until January 12, 2017 to pay the outstanding rent or file to dispute the Notice; otherwise, the tenancy would end on January 17, 2017. The effective date is changed automatically under section 53 of the Act to read January 17, 2017.

I note that the tenancy agreement does not include a written service address for the landlords, as is required under the Act. Although the landlords have an agent living next door to the rental unit, the landlords are still required to provide a service address in writing to the tenants. Upon review of the 10 Day Notice, I see that the landlords did include their service address on the 10 Day Notice. Accordingly, the tenants were in receipt of a service address for the landlords upon receipt of the 10 Day Notice and they were at liberty to use that service address to pay the outstanding rent or file to dispute the 10 Day Notice. However, the tenants did neither and continued to make partial payments by way of e-transfer. Therefore, I find the tenants were not prevented from paying the outstanding rent or disputing the 10 Day Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice by January 12, 2017 I find the tenancy legally ended on January 17, 2017 and the landlords are entitled

to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Pursuant to the tenancy agreement, the tenants were required to pay rent of \$1,500.00 per month. It is undisputed that the tenants have withheld \$300.00 of the rent otherwise due from January 2017. I have considered whether the tenants had a legal right to withhold rent as follows.

A tenant may gain the legal right to withhold rent in very limited circumstances under the Act, such as obtaining the landlord's prior authorization to make a deduction; obtaining an Arbitrator's prior authorization; or, incurring costs to make an emergency repair, provided all of the criteria of section 33 are met. Having repair issues is not in itself a basis for withholding rent under the Act. Where an emergency repair, as defined under section 33, is required and made at the tenant's expense a tenant may not withhold rent unless a receipt has been given to the landlord, among other criteria.

In this case, the tenants have not given the landlords any receipts for repair expenses and I find the tenants were not entitled to deduct any amount from rent for repairs except the landlords did authorize a deduction of \$650.00 in July 2016 for the septic pumping even though a receipt was not produced. Accordingly, I find the tenants still owe the landlords rent of \$300.00 for January 2017 and loss of rent for the month of February 2017 since they continue to occupy the rental unit. Therefore, I award the landlords \$1,800.00 as requested, plus, recovery of the \$100.00 filing fee for a Monetary Order in the total amount of \$1,900.00.

For added certainty, the above described Monetary Order has not been reduced by the security deposit and the security deposit remains in trust to be administered at a later date in accordance with the Act.

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service.

The landlords have been provided a Monetary Order for the total amount of \$1,900.00 for unpaid and/or loss of rent up to and including February 2017 and recovery of the filing fee.

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 16, 2017

Residential Tenancy Branch