



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, 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; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call.

The landlord testified that the tenant was served with the Landlord Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on February 5, 2017 and has provided a copy of a Registered Domestic Customer Receipt bearing a date stamp by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for extra property management fees?
- Should the landlord be permitted to keep all or part of the security deposit and pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this tenancy began in May, 2016 and the parties entered into a new tenancy agreement on September 10, 2016 for a tenancy to begin on September 24, 2016 on a fixed-term basis for 9 months, expiring May 31, 2017. Copies of the tenancy agreement and an Addendum have been provided. Rent in the amount of \$1,500.00 per month is payable on the 24th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, both of which are still held in trust by the landlord. The rental unit is the main floor of a house with a basement suite which is also currently tenanted.

The tenant failed to pay rent when it was due in December, 2016 and the landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided, by attaching it to the door of the rental unit. It is dated January 17, 2016 and contains an effective date of vacancy of January 31, 2016 for unpaid rent in the amount of \$1,500.00 that was due on December 24, 2016. A Proof of Service document has also been provided, signed by a person who served the notice and by a witness.

The tenant paid the landlord \$1,500.00 on February 1, 2017 for which the landlord provided a receipt that specified the money was being accepted for use and occupancy only and does not serve to reinstate the tenancy. The tenant has not served the landlord with an application for dispute resolution disputing the notice, and rental arrears have accumulated. The landlord seeks an Order of Possession and a monetary order for \$3,000.00 of rental arrears, for the January 24 and February 24, 2017 rent.

The landlord does not reside in the same community as the rental unit, and had to pay an additional \$100.00 to a property manager to check on the property. Copies of emails from the property manager have been provided which describe the appearance of the outside of the rental unit; both are dated February 3, 2017. The landlord claims \$100.00

from the tenant for the extra fees charged by the property manager. The tenant has had a history of late rent payments and has 2 large dogs, and the landlord felt it necessary to have the property manager check up on the property.

The emails show that the dogs have caused damage to the property, but the landlord does not know the costs involved, but requests an order permitting the landlord to keep the pet damage deposit.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the 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.

I have reviewed the evidentiary material provided by the landlord, and I note several errors with respect to dates and other information. The notice to end tenancy is dated 2016 in both the date issued and the effective date of vacancy. The *Residential Tenancy Act* states that incorrect effective dates are changed to the nearest date that complies with the law, so there is no issue with respect to the effective date. The date of issuance, if mentioned in the Proof of Service document, could also be corrected and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenant failed to pay rent that was due on December 24, 2016.. However, the Proof of Service document shows that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the 18th of January, 2017 by attaching a copy on the door or other conspicuous place – on the front door. The witness section states that on January 18, 2017 the witness observed the server attach Proof of Service to the front door. Because the server has signed and indicated on the form that the notice was served by attaching it to the front door on January 18, 2017, I accept that the tenant was served in accordance with the *Residential Tenancy Act*. I also find that the notice is deemed to have been served 3 days later, or January 21, 2017.

The landlord testified that the tenant did not pay the rent within 5 days, having paid it on February 1, 2017, but by then another month of rent was overdue. The landlord also testified that the landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and I have no such application before me. 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 effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the landlord's claim for unpaid rent, I accept the undisputed testimony of the landlord that the tenant owed rent for the 24th day of each of the months of December, 2016 and January and February, 2017, in the amount of \$1,500.00, but has only paid the landlord \$1,500.00 since the notice to end the tenancy was issued. I am satisfied that the landlord has established the claim of \$3,000.00 for unpaid rent.

With respect to extra property management fees, the landlord has not provided any evidence of the cost, and I am not satisfied that the landlord has established the \$100.00 claim.

The landlord currently holds a security deposit and a pet damage deposit in the amount of \$750.00 each. The *Residential Tenancy Act* only permits a landlord to claim a pet damage deposit for damages caused by a pet. I have read the emails of the property manager, however since the tenancy has not yet ended, and there is no evidence of the costs that may be involved, I dismiss the landlord's applications for monetary compensation for damages and to keep the pet damage deposit, with leave to reapply.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$2,350.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$750.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,350.00.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit is hereby dismissed with 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: March 02, 2017

Residential Tenancy Branch

