



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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 joined the call.

The landlord testified that he served the tenant with the Landlord's Application for Dispute Resolution and notice of this hearing by personally handing the hearing package to the tenant on March 17, 2017. I accept that testimony and I find 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically loss of rental revenue?
- Should the landlord 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 in or around May, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$1,150.00 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 \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within a complex containing 4 units, all of which are owned by the landlord and are all currently tenanted. No written tenancy agreement was prepared or signed by the parties.

The landlord further testified that the tenant continually pays rent around the middle of the month, and did not pay all rent owed for February, 2017, having only paid the landlord \$1,000.00. No rent has been paid for March or April, 2017.

The landlord testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 15, 2017 and a copy of the first page of the 2-page notice has been provided for this hearing. It is dated March 7, 2017 and contains an effective date of vacancy of March 17, 2017 for unpaid rent in the amount of \$1,300.00 that was due on March 1, 2017. The Landlord's Application for Dispute Resolution states it was served in person on March 7, 2017. A Proof of Service document has also been provided which states that it was posted to the door of the rental unit on March 7, 2017 and is witnessed by another person.

The landlord has also provided a copy of a letter to the tenant dated March 7, 2017 stating that the tenancy is ending, and the tenant owes the landlord \$150.00 for the previous month as well as rent for March, and payment will be for use and occupancy only. The landlord testified that the tenant has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice. Also provided is a Monetary Order Worksheet setting out the claim of \$1,300.00 for March, 2017 rent and \$1,300.00 for April loss of rental revenue, for a total claim of \$2,600.00.

The landlord seeks an Order of Possession, an order permitting the landlord to keep the \$650.00 security deposit in partial satisfaction of the claim, a monetary order for \$2,600.00 and \$100.00 as recovery of the filing fee.

Analysis

Where a landlord applies for an Order of Possession and a monetary order for unpaid rent or utilities, the landlord must be able to establish that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*. In this case, the landlord

testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the tenant on March 15, 2017 but has provided evidence showing that it was served by posting it to the door of the rental unit on March 7, 2017.

Also, the *Act* requires that both pages of the 2-page notice be served. The landlord has only provided the first page of the 2-page notice. Absent the second page, I cannot be satisfied that the landlord issued it in accordance with the *Residential Tenancy Act*. Therefore, I dismiss the landlord's application for an Order of Possession with leave to reapply.

The landlord testified that the tenant is in arrears of rent the sum of \$150.00 for February and \$1,150.00 for March, and has not yet paid rent for April, 2017. The Monetary Order Worksheet sets out a claim of \$2,600.00 being \$1,300.00 for each of the months of March and April, 2017, and the landlord's application also seeks \$2,600.00. I find the evidentiary material to be inconsistent with the landlord's testimony, and although I am satisfied that the tenant owes rent, I am not satisfied that the landlord has established the amounts.

Therefore, I dismiss the landlord's application for a monetary order and for an order permitting the landlord to keep the security deposit with leave to reapply.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety with leave to reapply.

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: April 05, 2017

Residential Tenancy Branch