



Dispute Resolution Services

Page: 1

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; 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 and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all testimony and the evidence provided are considered in this Decision.

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?
- 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 about 3 ½ years ago and the tenant still resides in the rental unit. Rent in the amount of \$650.00 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 \$325.00 which is still held in trust by the landlord and no pet

damage deposit was collected. No move-in condition inspection report was completed, and no tenancy agreement was signed by either party. The rental unit is a basement suite and the upper unit is also tenanted.

The landlord further testified that on March 6, 2017 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit, and gave a copy to the tenant's roommate. A copy has been provided for this hearing and it is dated March 6, 2017 and contains an effective date of vacancy of March 6, 2017 for unpaid rent in the amount of \$350.00 that was due on March 1, 2017. The tenant has not served the landlord with an application for dispute resolution disputing the notice and has not paid the rent. Arrears have now accumulated to \$700.00, which the landlord claims against the tenant in addition to the \$100.00 filing fee.

The landlord also testified that the tenant's daughter was staying in a room in the upper level of the rental home and paid her own rent. She lived there for almost 3 months, moved out on February 17, 2017 and only paid rent for 2 months. The landlord collected rent from a government ministry for January and February, but the landlord gave back the \$375.00 for February to the Ministry.

The tenant testified that her portion of the rent is \$325.00 and her roommate pays the other \$325.00 per month. The tenant owes rent for April, 2017, but not for March, 2017.

The tenant's son was living in the upper unit of the rental home with a friend. They paid the landlord \$1,500.00 per month, and when the tenant's daughter stayed there the landlord wanted more rent money. The tenant told the landlord that he couldn't do that. The tenant's daughter gave the landlord \$200.00 in December, 2016. Then the landlord got a cheque for January's rent from the Ministry on or about December 23, 2016 in the amount of \$375.00 on behalf of the tenant's daughter. The landlord was supposed to return it because she didn't live there, but the landlord cashed the cheque saying he would give back the money when other tenants paid rent. Then the landlord told the tenant to give her daughter \$375.00 out of her rent money because the landlord didn't have it at the time. The tenant gave the rent money to her daughter as recovery of the money the landlord was not entitled to collect, and the tenant's rent for March was covered by making that payment for the landlord. The tenant's daughter did not live in the rental home in either suite at all, and the tenant is tired of arguing with the landlord about charging guests to stay in the rental units.

The tenant's rent was also paid directly to the landlord from a government ministry, but the tenant stopped that practice and pays cash. The landlord has not issued any receipts.

The tenant's son moved out of the upper unit of the rental home in March, 2017.

The tenant's first witness (CG) is the tenant's daughter and testified that she stayed at her brother's rental unit and rented a room from her brother. The witness had a government ministry pay the landlord \$375.00 for January's rent on or about December 21, 2016 and the landlord said he'd give it back, but there were several arguments about whether or not the witness lived there. On January 5, 2017 the landlord agreed in front of the witness' brother and the tenant's roommate that the landlord would repay the witness when other tenants paid their rent. After the witness had departed, she contacted the landlord in February, who said he would not return the rent and authorized the tenant to give it to the witness instead of paying rent to the landlord.

The tenant's second witness (NT) testified that she is the roommate of the tenant, and each of them pays the landlord rent in the amount of \$325.00 per month.

The witness also testified that the tenant's daughter paid the landlord rent and then asked for it back. The daughter's brother and another fellow rented the upper unit and the daughter was staying there until her place was ready.

The landlord attends at the rental unit to collect rent in cash but does not issue receipts.

Analysis

Firstly, the landlord has served only 1 of 2 tenants who rent the rent the rental unit with a notice to end the tenancy and has only applied for an Order of Possession and a monetary order for unpaid rent or utilities as against 1 of 2 tenants. Unless the landlord is able to establish that there are 2 separate tenancy agreements, any Order of Possession I might grant would require both tenants to move out, and the landlord has not established 2 tenancy agreements.

Once a tenant has been served or deemed served with a 10 Day Notice to End Tenancy for Unpaid rent or Utilities, the *Residential Tenancy Act* states that 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.

In this case, the tenant did not dispute the notice but claims that the landlord told the tenant to give the rent money to her daughter as recovery of rent that the landlord shouldn't have collected from the daughter. The tenant also testified that constituted the payment of rent for March, 2017. If I accept that testimony, I must find that the tenant had paid the rent prior to the issuance of the notice.

The notice also states that the tenant failed to pay rent in the amount of \$350.00 that was due on March 1, 2017, and the landlord also testified that another \$350.00 has accumulated increasing the landlord's claim to \$700.00, yet the parties agree that rent is \$650.00 per month and each of the tenant and her roommate pay \$325.00.

The landlord has not provided any records, has not entered into written tenancy agreements with any of the tenants, collects rent in cash without giving receipts, and testified that the tenant's daughter "used a room," and "paid her own rent," while the landlord collected from other tenants.

Regardless of the amounts collected, a tenancy agreement exists whether or not it is in writing by virtue of collecting rent, and that amount of rent cannot be changed without written consent of the tenant, a new written tenancy agreement, or by serving a Notice of Rent Increase annually. A landlord may not increase rent or charge a fee if a guest stays in the rental unit or if another person moves in unless the parties agree in writing. However, that matter is a separate rental unit from this one, and is only relevant in the sense that the tenant claims rent was paid to the landlord by agreement wherein the tenant reimbursed money to her daughter that the landlord had incorrectly collected and that "loan" to the landlord was to cover rent for March, 2017..

The landlord seeks orders under the *Residential Tenancy Act* after failing to comply with the *Act*. In the circumstances, I am not satisfied that the tenant owed any rent for March, 2017. The onus is on the landlord to establish the claims and there is no evidence before me to substantiate that rent wasn't paid within 5 days of the issuance of the notice, and the landlord's application is dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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 11, 2017

Residential Tenancy Branch