



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; 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 tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties also agreed that all evidence has been exchanged, and the parties were permitted to question each other and give closing submissions.

At the commencement of the hearing the landlord advised that the tenants have vacated the rental unit and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- 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 parties agree that:

- a hearing was held on March 21, 2017 dealing with the tenants' application for an order cancelling a notice to end the tenancy for landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;

- the resulting Decision dated April 05, 2017, a copy of which has been provided for this hearing, specifies:
 - the amount of rent payable per month at \$1,100.00;
 - that the landlord agreed to cancel the notice to end the tenancy,
 - the landlord was ordered to compensate the tenants the sum of \$683.87, which was permitted to be deducted from future rent payable, and
 - the landlord was ordered to pay 2/3 of the hydro bills.

The landlord testified that this fixed term tenancy began on November 1, 2016 and expires on November 1, 2017 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,100.00 per month is payable under the tenancy agreement on the 3rd day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on April 4, 2017 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided and it is dated April 4, 2017 and contains an effective date of April 13, 2017 for unpaid rent in the amount of \$1,100.00 that was due on April 3, 2017. The tenants did not dispute the notice, but moved out of the rental unit on April 15, 2017 without notifying the landlord and without paying the rent.

The landlord seeks a monetary order for unpaid rent totalling \$2,400.00 and seeks to have the previous order rescinded or reduced.

The landlord also acknowledges stating that the tenants could move out earlier than the end of the fixed term. The rental unit has not been re-rented; damage is being repaired.

The first tenant (DRD) testified that the landlord made it impossible to continue to reside on the rental property. The tenants had to call 911 twice and the landlord was ordered to stay off the property but continued to enter and filmed the tenant illegally in the nude. The landlord drinks heavily and has a gun improperly stored. The tenants feared for their safety and tied the door shut at night. The landlord breached the tenants' right to quiet enjoyment completely.

The tenants told the landlord they would pay once the Decision from the previous hearing was received but the landlord gave the tenants the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities instead.

A neighbour asked the landlord if the tenants could move out earlier than the fixed term and the landlord agreed. The neighbour has provided a letter to that effect which forms part of the tenants' evidence. That evidence and the notice to end the tenancy gave the tenants the right to move out.

The second tenant (MJD) testified that she was sick due to the landlord's behaviour which continued to get so much worse. The tenants called 911 and police came. The landlord stood with a video camera recording the tenants and the officer told her to stay away but the landlord did not comply and made the tenants' life a total living hell.

Analysis

Firstly, I cannot, nor do I see any reason to rescind or reduce my previous order.

The landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 4, 2017, and my previous Decision and Order are dated April 6, 2017. The tenants didn't pay the rent in April on the 3rd day of the month as per the tenancy agreement, but moved out in accordance with the notice given by the landlord. The tenants' position is that the landlord breached the tenants' right to quiet enjoyment which justified ending the tenancy. In the circumstances, I am satisfied that the tenants owe rent of \$1,100.00 for April, 2017, LESS the amount previously ordered of \$683.87, for a total of \$416.13.

The landlord also claims rent for the month of May, 2017 because the tenants didn't give notice to vacate. Where a landlord claims future rent, the landlord must establish that the landlord did what was reasonable to mitigate any future loss of rental revenue. In this case, the landlord has not re-rented the rental unit, has provided no evidence of advertising it for rent, and testified that damages are being repaired. No move-in or move-out condition inspection reports were completed and the landlord felt it reasonable to take video images of the rental unit at the beginning and end of the tenancy, but that is not sanctioned by the *Act*. I am not satisfied that the landlord has mitigated any loss of rental revenue for May and the landlord's application for monetary compensation for May's rent is dismissed.

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

The landlord received the tenants' forwarding address in writing on the envelope that contained the tenants' evidentiary material.

I order the landlord to keep \$516.13 of the security deposit and return the balance to the tenants. If the landlord fails to do so within 15 days of today's date, the tenants will be at liberty to apply for double.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$516.13 of the \$550.00 security deposit and return the balance to the tenants within 15 days of today's date. If the landlord fails to do so, the tenants will be at liberty to claim double the amount of the security deposit.

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: May 17, 2017

Residential Tenancy Branch