



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the landlord's amendment to his original application pursuant to the *Act* for:

- an order of possession based on the agreement in writing that the tenancy is ended pursuant to section 55.

The tenants did not participate in the conference call hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that he personally served the tenants' with the landlord's application for dispute resolution hearing package on April 20, 2017 and the amendment to the application on May 2, 2017. The landlord attached a witnessed proof of service for the application, signed on April 20, 2017, and a witnessed proof of service for the amendment, signed May 2, 2017, with his application. In accordance with section 89 of the *Act*, I find that the tenants were served with the application on April 20, 2017 and the amendment on May 2, 2017.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on February 1, 2017 on a fixed term until February 1, 2018. Rent in the amount of \$800.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$400.00 at the start of the tenancy, which the landlord still retains. The tenants remain in the rental unit.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") of \$800.00 on April 1, 2017 was issued to the tenants on April 2, 2017 by way of posting to the rental unit door where the tenants reside. The landlord provided a signed, witness proof of service. The 10 Day Notice indicates an effective move-out-date of April 2, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on April 5, 2017, three days after its posting.

The landlord testified that on April 20, 2017 the parties signed a Mutual Agreement to End Tenancy ("mutual agreement"). The landlord provided a copy of the mutual agreement as part of his documentary evidence. The mutual agreement indicates a vacancy date of April 30, 2017.

The landlord seeks a monetary order in the total amount of \$800.00. Although the landlord claims that the tenants have not paid any rent for April or May 2017 he confirmed that he only seeks to recover April rent. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the

notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Although the tenants failed to pay the full rent due on April 1, 2017, did not pay the rent within five days of receiving the 10 Day Notice and did not dispute the notice, the parties entered into a mutual agreement to end the tenancy after the 10 Day Notice was issued. Because of this, I find the landlord reinstated the tenancy and therefore waived his right to pursue the 10 Day Notice.

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenants agree in writing to end the tenancy. In this case, the tenants and landlord agreed in writing that the tenancy would end on or before April 30, 2017. The landlord was entitled to possession of the rental unit on that date. As that has not occurred, I find the landlord is entitled to a two-day order of possession for the rental unit.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$800.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent for April 2017. Therefore, I find that the landlord is entitled to \$800.00 in rent. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$900.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$400.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$500.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

I issue a monetary order in the landlord's favour in the amount of \$500.00 against the tenants. I order the landlord to retain the tenants' security deposit for this tenancy.

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 18, 2017

Residential Tenancy Branch