



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNDC, MNSD, FF, CNC, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for:

- an Order of Possession for cause;
- a monetary order for damage to the unit, site or property;
- 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 tenants for the cost of the application.

The tenants have applied for:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord.

The landlord and one of the tenants attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony, and the parties were given the opportunity to question each other and the witness. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing I determined that not all of the applications made by the parties are sufficiently related, and I ordered that the hearing focus on the notice to end the tenancy.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- should the One Month Notice to End Tenancy for Cause be cancelled?
- has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 which was fixed for 1 year and then reverted to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$860.00 per month was originally payable on the 1st day of each month, which was increased from time-to-time and is currently \$900.00 per month effective March 1, 2017. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$430.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and the landlord does not reside on the rental property. A copy of the tenancy agreement has not been provided by either party.

The landlord further testified that he served the tenants with a One Month Notice to End Tenancy for Cause on May 10, 2017 by placing it in the tenants' mailbox. A copy has been provided for this hearing and it is dated May 8, 2017 and contains an effective date of vacancy of June 30, 2017. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that the tenants usually paid rent by mailing cheques to the landlord. The landlord received a rent cheque for April before April 1, 2017 but it bounced on April 6, 2017. The landlord sent a text message to the tenants about it who replied there was a money order, but the landlord hadn't received it and rent wasn't paid until April 15, 2017. The tenants were also late in December, 2016, having paid \$400.00 on December 1 and \$430.00 on December 8. The landlord also received \$450.00 on November 1, 2016 and the balance on November 10. The same situation applied to October, 2016 rent, and in September rent was very late, likely received by the landlord around the 15th of the month. The landlord had served notices to end the tenancy for late rent in June, July and September, 2016, but not for October or November because partial payments were received. No rent has been received for this month.

The parties had been to a dispute resolution hearing previously wherein the landlord was ordered to make repairs and rent was reduced, but the Arbitrator erred and didn't understand the testimony or evidence. The Decision speaks of a leaking roof, not damage, and the Decision states that the tenancy has been devalued, but the landlord disagrees and there are no leaks currently; it's covered with poly. As a result of the Decision, the tenants didn't pay any rent for June, 2017, but the Arbitrator was wrong, and the landlord seeks a monetary order for unpaid rent of \$900.00 for June. There are no other rental arrears.

The landlord further testified that the tenants informed the landlord of leaks in the roof in the living room and bedroom in October or late September, 2015 and the landlord sent a professional drywaller to the rental unit who found poly on the roof. The tenant had placed 8 foot 1 x 2's on top of poly and pounded 5 or 6 of them to hold the poly in place. Two of them are close to the leaking spots and a nail was punched in next to the leak. The tenants had used 3 ½ inch spikes which were punched all the way through the trusses, using 40 or 50 spikes. The contractor removed the wood and poly, pulled out the nails and applied calking, then repaired the original leaks on October 11, 2015. There was heavy rain in November and December, and the rental home has been dry, but in December the tenants asked the landlord for more poly for snow, but the landlord refused. The tenants got some from the contractor and put it on the roof again using spikes and staples making another 100 or more holes in the roof. About a year later the tenant replaced it again. The tenant said it didn't matter how he fixed it because it needed to be replaced anyway.

The tenants have caused extraordinary damage, and the landlord must replace the roof but cannot do so until the tenants move out.

The landlord's witness testified that he has known the landlord for over 20 years, and in 2002 the witness repaired the roof by replacing rotten plywood and clearing away the debris. Then a roofer put on black paper, and the roof was new in 2002.

In 2015 the tenants complained of a leak in the living room and then later a leak in the bedroom, and the witness repaired both. The tenants had put nails in the centre of the roof close to a leak and told the witness that it had to be replaced anyway.

The tenant testified that the first dispute resolution hearing was about an electrical problem, which has still not been addressed. The landlord was upset when he received the Decision.

Shortly after moving into the rental unit the tenants were in a bad car accident, and there have been other hard financial times and the landlord said he didn't care if rent was paid in 2 payments and agreed to accept rent according to the tenants' pay periods. It was always acceptable to pay when the tenants got paid. The cheque that was returned N.S.F. in April was replaced with a money order and it took some time to trace it. The tenants have provided evidence of a tracer being placed on it by the financial institution.

The Decision of the previous arbitration was received by the tenants on May 4, 2017 which states that the tenants are entitled to rent reduction and the tenants went by that order and don't owe any rent for June.

The tenant also disputes the landlord's testimony of 50 or 100 spikes, and testified that in the last hearing the landlord testified there were 9 spikes.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to extraordinary damage, I cannot fathom why the tenants would deal with the roof themselves by applying any poly or 1 x 2's with spikes or nails or staples. The *Act* is very clear with respect to repairs and emergency repairs and specifically:

33 (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

With respect to repeated late rent, the tenant testified that the landlord allowed rent to be paid according to the tenants' pay schedule, but the landlord denied that testifying that notices to end the tenancy for late rent were issued in the past. He also testified that rent is due on the 1st day of each month, which was not disputed by the tenant, and that the tenants were late in September, October, November and

December, 2016. If the landlord agreed to payments at a different date or dates, the parties ought to have that in writing. Three late payments are the minimum to justify repeated late rent, and I find that the landlord has established that.

Therefore, I dismiss the tenants' application to cancel the notice, and I grant an Order of Possession in favour of the landlord effective June 30, 2017, the effective date contained in the One Month Notice to End Tenancy for Cause.

Since the tenancy is ending, I dismiss the tenants' application for an order that the landlord comply with the Act, regulation or tenancy agreement.

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon. The Decision from the previous hearing states, in part:

Electric: I find the tenants are entitled to the nominal amount of \$50.00 per month in reduction of past rent for the above months for an award of \$150.00. **The tenant may reduce a future rent payment in the amount of \$150.00. The tenants are further permitted to reduce future rent in the amount of \$50.00 per month beginning on May 1, 2017** until such time as the repairs are satisfactorily completed. Once written notice of completed electrical repairs is provided to the tenants, the \$50.00 future rent reduction is no longer applicable effective the next monthly rent due date following the receipt of the notice.

Roof: I find the tenants are entitled to the nominal amount of \$100.00 per month in reduction of past rent for the above months for an award of \$500.00. **The tenant may reduce a future rent payment in the amount of \$500.00. The tenants are further permitted to reduce future rent in the amount of \$100.00 per month beginning on May 1, 2017** until such time as each of the above referenced repairs are satisfactorily completed. Once written notice of completed electrical repairs is provided to the tenants, the \$100.00 future rent reduction is no longer applicable effective the next monthly rent due date following the receipt of the notice.

Utilities: I find the tenants are not responsible for the late fees in the total amount of \$10.77 on the March 31, 2017 and November 30, 2016 utilities bills as these were not provided to the tenants within a reasonable time prior to the due dates.

Filing fee: **The tenant may reduce a future rent payment in the amount of \$100.00.**

Whether or not the landlord agrees with the Decision or whether or not the arbitrator understood the landlord's evidence is not relevant. The Decision states that the tenants are permitted to reduce rent, and I find that they have done so, and the landlord is not entitled to the payment rent for the month of June. Therefore, I dismiss the landlord's application for a monetary order for unpaid rent.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord effective June 30, 2017 at 1:00 p.m. and the tenancy will end at that time.

The landlord's application for a monetary order for unpaid rent is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee.

The balance of the landlord's application is hereby dismissed 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: June 21, 2017

Residential Tenancy Branch