



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, 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 landlord and a witness for the landlord attended the hearing and each gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord and the witness both testified that the tenants were served by personally handing both hearing packages each containing the Landlord Application for Dispute Resolution and notice of this hearing to one of the tenants on May 17, 2017. The *Residential Tenancy Act* requires that both tenants be served individually. The landlord testified that the tenants are mother and son, and given that only one has been served, I dismiss the application as against the other respondent.

At the commencement of the hearing the landlord advised that the tenants have vacated the rental unit, and therefore, I dismiss the landlord's application for an Order of Possession.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant 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 landlord testified that this fixed term tenancy began on July 1, 2012 and expired on June 30, 2013 thereafter reverting to a month-to-month tenancy. The tenants are mother and son, and vacated the rental unit on May 17, 2017. Rent in the amount of \$1,675.00 per month was payable at the commencement of the tenancy, which was raised from time-to-time. The tenancy agreement, a copy of which has been provided for this hearing specifies a security

deposit in the amount of \$837.50 as well as a pet damage deposit in the amount of \$837.50 however the tenants paid that by working for the landlord.

The tenants are in arrears of rent the sum of \$17,339.00 for September, 2016 through to May, 2017. The tenants failed to pay rent for December, 2015, which was \$1,726.00. In January, 2016 the tenants paid \$863.00, but no rent at all from September, 2016 to May, 2017. Rent was increased to \$1,826.00 in September, 2016 and then the sum of \$1,894.00 per month was payable as at April 1, 2017.

New tenants have moved in now, with a tenancy agreement to begin July 1, 2017.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated April 2, 2017 and contains an effective date of vacancy of April 12, 2017 for unpaid rent in the amount of \$15,744.00 that was due on April 1, 2017.

The landlord has also provided copies of a Decision of the director and an Order of Possession dated May 9, 2017 showing a hearing took place on May 9, 2017 concerning the tenants' application for monetary compensation as against the landlord and for an order cancelling the notice to end the tenancy for unpaid rent. The tenants' application was dismissed and the landlord obtained an Order of Possession effective 2 days after service.

The landlord has also provided a copy of a tenant ledger of a property management company showing that as at Nov 22, 2013 the tenants owed the landlord, after late fees charged from time-to-time, the sum of \$60.77, and that rent was \$1,738.60 per month from July 1, 2013 to January 1, 2014. Other monthly statements have also been provided.

The landlord seeks a monetary order for unpaid rent in the amount of \$17,339.00, plus unpaid rent for May, 2017 in the amount of \$1,894.00, and recovery of the \$100.00 filing fee.

The landlord's witness is a realtor who assisted the landlord in selling the house. The tenants wouldn't allow showings, so the realtors couldn't sell it. The home was listed in January or February, 2017, and the tenants were supposed to get some work done, but didn't finish and didn't pay any rent. The landlord had told the witness that the tenants hadn't paid rent for 10 months. The tenants told the witness they were holding back rent for work they did to the rental unit, but never said how much.

About a week before the tenants moved out the witness was finally able to get into the rental unit and witnessed lots of damages.

Analysis

I have reviewed the evidentiary material of the landlord, particularly the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenancy agreement, and the Decision of the director

dated May 9, 2017. It is clear that the tenants at that time disputed the notice on the basis that they had done work for the landlord.

The ledger shows that rent was \$1,738.60 per month from June 30, 2013 through to January 1, 2014, however the landlord testified that in December, 2015 rent was \$1,726.00 per month, a lesser amount. The landlord also testified that in September, 2016 rent was \$1,826.00 per month, a \$100.00 increase, and was increased again to \$1,894.00 per month commencing April, 2017.

In the circumstances, I accept the undisputed testimony of the landlord that the tenants failed to pay any rent from September, 2016 to May, 2017, and in the absence of any evidence of legal rent increases, I find that the landlord has established the claim at the original amount of rent, \$1,675.00 per month, or \$15,075.00.

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

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order as against the tenant (BZH) is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant, KLH, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$15,175.00.

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: July 06, 2017

Residential Tenancy Branch