



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND
CNR, LAT, OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and for damage to the unit, site or property. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order permitting the tenants to change the locks that give access to the rental unit; and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

All named landlords attended the hearing, as well a witness for the landlords. One of the tenants also attended and represented the other named tenant. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to question each other and the witness, and to give submissions.

At the commencement of the hearing, one of the landlords advised that the tenants served the landlords with the hearing package of the tenants by leaving them on a deck table at the landlord's spouse's place of residence on May 25, 2017 and then served another package on June 24, 2017 in the same method, which was the tenants' response to the landlords' application. Although that is not sufficient service of an Application for Dispute Resolution, the landlords did not oppose inclusion of any of the tenants' evidence. All evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenants' application be dismissed for not serving the hearing package in the manner set out in the *Residential Tenancy Act*?

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the tenants established that they should be permitted to change the locks that give access to the rental unit?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to pets?

Background and Evidence

The first landlord (AMC) testified that she is the property manager for the owner, who is named in this dispute as a landlord.

This fixed term tenancy began on August 15, 2016 and expires on August 14, 2018, and the tenants still reside in the rental unit. Rent in the amount of \$750.00 bi-monthly is payable on the 15th and 1st days of each month. A copy of a tenancy agreement has been provided showing a security deposit amount of \$750.00, however the tenants never paid it, and no pet damage deposit was collected by the landlords. The rental unit is a half acre property.

The tenants failed to pay rent in full on August 15, 2016. The tenants further failed to pay rent in full in December, 2016, having paid only \$650.00 on December 21, 2016, leaving arrears outstanding of \$850.00. On May 16, 2017 the landlord personally served to one of the tenants 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 May 16, 2017 and contains an effective date of vacancy of May 26, 2017 for unpaid rent in the amount of \$850.00 that was due on May 15, 2017.

Since the notice was issued, the tenants paid \$750.00 on May 31; \$750.00 on June 12; and \$750.00 on June 25, 2017, and on each occasion the landlords provided a receipt specifying, "For Use and Occupancy Only." The landlords have also provided a copy of a ledger, and the landlord testified that as at the date of filing the application, the tenants had not yet paid rent for June or July 1, 2017.

The landlord also sent a letter to the tenants on May 26, 2017 again requesting the security deposit, but the tenants said they paid it to a previous landlord. The tenants have provided a copy of a tenancy agreement with that landlord, however it is not signed. The person named as landlord in that agreement is the daughter of the owner. It shows that the tenants were to pay \$800.00 for a security deposit and \$250.00 for a pet deposit, however that agreement is not an agreement because it is only signed by the tenants, and the owner has a tenancy agreement with the tenants.

The second landlord (AM) testified that he is the owner and landlord of the rental unit, and has not received a security deposit or a pet damage deposit from the tenants, despite requesting. The tenants were also late with the rent, and the landlord let it go for awhile.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$100.00 for recovery of the filing fee;
- \$750.00 for the unpaid security deposit;
- \$2,250.00 for June and July, 2017 rent;
- \$315.39 for repair to the door;
- \$213.07 for stain.

The landlord's spouse testified that she received the first bank statement and had expected the August 15, 2016 payment, but only saw one for September. She contacted the tenants about it, and the tenants mentioned an appliance repair, but another month went by and still no rent was paid. The tenants were to give the landlords receipts for payment of invoices for appliance repair, and despite asking, none were received.

The landlord's witness testified that she has power of attorney for the owner, and attended the rental unit on June 1, 2017 for an inspection as required by the insurance company. Upon entry, the witness noticed a very large crack in the door which appeared that it had been slammed. The witness took photographs and showed them to an employee at Rona and obtained a quote for repairing it. The witness got another quote, and went back to Rona. The door is part of a big double French door unit, and the rental unit has another double French door unit. In order to match the stain, all doors require staining at a cost of \$213.07, and for the repair, including labor is estimated at \$315.39. The witness also viewed the door previous to this tenancy and it was worn, but not broken.

The tenant testified that the tenants actually moved into the rental unit on April 1, 2016 and paid a security deposit in the amount of \$800.00, but did not pay a pet damage deposit. An inspection was also done that day. The tenants have provided a copy of a bank statement showing an amount of \$800.00 for rent paid to the landlord's daughter dated April 1, 2016. The tenant testified that it was actually the security deposit, not rent.

The tenants have also provided screen shots of transfers to the landlord's daughter on June 1, 2016 the amount of \$1,600.00; June 15, 2016 of \$800.00; July 2, 2016 of \$1,600.00 (written beside: "July Rent"); and July 29, 2016 of \$1,200.00 (written beside: "Aug. Rent").

On July 29, 2016 the tenant's email transfer to the landlord's daughter in the amount of \$1,200.00 was for August, 2016 rent, and the landlord's daughter agreed that the tenants keep \$400.00 for making repairs and general maintenance. Therefore, that payment was to cover the entire month of August, 2016.

On October 14, 2016 the tenant sent an email to the landlord's daughter requesting that she return the \$800.00 security deposit to the tenants or forward it to the landlords within 30 days. Another email dated August 21, 2016 from the tenants to the landlord's daughter has also been provided as evidence stating that the tenants have been legally advised to not accept contact from her, and that the tenants have a new tenancy agreement. A reply from her dated August 22, 2016 states that the tenants have a legal lease with her, and that she expects the remainder of \$400.00 rent to be paid.

The landlord's spouse agreed that the tenants deduct \$100.00 from rent for December, 2016 for repairing a dishwasher and a dryer, but not in writing.

The tenant also testified that upon move-in, there was a hair-line crack in the door, and the wind blew it closed and it broke.

Analysis

I have reviewed all of the evidentiary material, and there is no question that the landlords and the tenants named in this dispute entered into a tenancy agreement on August 15, 2016 for a tenancy to commence on August 15, 2016, and for rent payable in the amount of \$750.00 bi-weekly due on the 15th and 1st days of each month. The tenancy agreement also specifies a security deposit in the amount of \$750.00 by January 15, 2017, and the parties agree that the tenants did not pay that to the landlords named in this dispute. The tenants claim that a security deposit of \$800.00 was paid to the landlord's daughter, a previous landlord, but I see absolutely no

evidence of that. The tenancy agreement dated August 15, 2016 specifies a different amount, and is initialled by the tenant. I find that the tenants have not paid any security deposit to the landlords named in this dispute.

At the commencement of the hearing, one of the landlords advised that the tenants had served the Tenant's Application for Dispute Resolution and notice of hearing upon the landlords by leaving them on a deck table. The *Residential Tenancy Act* specifies how such documents are served, and the tenant did not dispute that method of service.

However, giving the tenants the benefit of any doubt, 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*. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. The parties have provided copies of receipts, e-transfers and bank statements. I do not accept the tenant's testimony that rent due the first day of the tenancy was paid to another person. None of the receipts or other evidence provided by the tenants covers that period, only a transfer of \$1,200.00 to the landlord's daughter on July 29, 2016. If rent, or any portion of it had been paid to a previous landlord, certainly the tenants would have advised the landlords of that when the tenancy agreement and first payment of rent was due on August 15, 2016. I find that rent has not been paid, and the landlords did not authorize any such deductions claimed by the tenants, and the landlords are entitled to an Order of Possession.

The tenants' application to cancel the notice is dismissed. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I further find that the landlords have established a monetary claim as against the tenants in the amount of \$850.00 for unpaid rent, and since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

With respect to the landlords' monetary claim for damage to the door, the *Residential Tenancy Act* specifies that a tenant must repair any damage prior to the end of the tenancy. Since the tenancy has not yet ended, I find that the landlords' application is premature, and I dismiss it with leave to reapply.

Since the tenancy is ending, I decline to order that the landlords comply with the *Act*, regulation or tenancy agreement.

Further, since the tenancy is ending, I decline to order that the tenants be permitted to change the locks that give access to the rental unit.

Conclusion

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

The landlords' application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$950.00.

This order is final and binding and may be enforced.

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