



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, 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; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and 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 tenant joined the call. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing on June 1, 2017 by registered mail and has provided a copy of a Canada Post cash register receipt bearing that date and Registered Domestic Customer Receipt addressed to the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for locksmith costs?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 15, 2017. Rent in the amount of \$1,000.00 per month is payable on the 15th day of each month. At the

outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord. The rental unit is a condominium suite, and the landlord does not reside in the complex. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant paid the first month of rent, and none since, and is currently in jail. No rent has been paid for April 15, or May 15, or June 15, 2017, and arrears have now accumulated to \$3,000.00. On April 18, 2017 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by taping it to the door of the rental unit, and a copy has been provided for this hearing. It is dated April 18, 2017 for unpaid rent in the amount of \$1,000.00 that was due on April 15, 2017. The effective date of vacancy has been left blank on the form, however it is signed and dated by the landlord. The landlord testified that no rent has been paid since it was served, and the tenant has not served the landlord with an application for dispute resolution disputing the notice.

The tenant changed the locks to the rental unit without the landlord's consent and without providing a key to the landlord. The landlord seeks an Order of Possession, a monetary order for the unpaid rent, \$100.00 for the cost of a locksmith and recovery of the \$100.00 filing fee.

Analysis

Firstly, the *Residential Tenancy Act* states that once served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenancy is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the notice was taped to the door of the rental unit on April 18, 2017, which is deemed to have been served 3 days later, or April 21, 2017. The tenant has not paid the rent, the landlord has not been served with an application by the tenant disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. The *Act* also states that incorrect effective dates contained in such a notice are changed to the nearest date that complies with the *Act*, which I find is May 1, 2017 (10 days after April 21, 2017). Since that date has passed, I find that the landlord is entitled to an Order of Possession effective on 2 days notice to the tenant.

With respect to the landlord's monetary claim, I accept the undisputed testimony of the landlord that the tenant only paid the first month's rent and is in arrears \$3,000.00 for the monthly payments of \$1,000.00 for April, May and June 15, 2017.

I also accept the undisputed testimony of the landlord that the tenant has abandoned the rental unit by not ensuring someone takes care of his affairs while he is incarcerated, and has changed the locks to the rental unit. The landlord claims \$100.00 and testified that will be the cost, which I find to be reasonable.

With respect to abandonment of personal property, the regulations state:

If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
 - (b) keep a written inventory of the property,
 - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
 - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
- (a) the property has a total market value of less than \$500,
 - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
 - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find the application to be premature considering the landlord has not been able to enter the rental unit, and I dismiss that portion of the claim with leave to reapply.

The landlord has not applied for an order permitting the landlord to keep the security deposit, and I decline to make any such order. The *Act* requires a tenant to provide the landlord with a forwarding address in writing within a year after the end of the tenancy. If the tenant fails to do so, the landlord need not return the security deposit. If the

tenant provides the landlord with a forwarding address in writing within a year, the landlord has 15 days from that date to apply for dispute resolution claiming against it.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filling fee and I grant a monetary order in favour of the landlord in the amount of \$3,200.00 (\$3,000.00 rent, \$100.00 locksmith, \$100.00 filing fee).

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,200.00.

The landlord's application for a monetary order for damage to the unit, site or property 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: July 12, 2017

Residential Tenancy Branch