



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, 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;
- an Order of Possession for Tenants' notice pursuant to section 45;
- 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, pursuant to section 72.

The landlord and both tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant V.M. (the tenant) provided all of the testimony on behalf of both tenants at this hearing.

The landlord testified that the Application for Dispute Resolution (Application), along with all supporting evidence, was served to the tenants by way of registered mail on June 09, 2017. Tenant V.M. confirmed the tenants received the Application with supporting evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenants were duly served with the landlord's Application and supporting evidence.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 04, 2017, was sent by registered mail to the tenants on that same day. The

tenants confirmed that they received the landlord's 10 Day NTE. I find that the tenants were duly served with the 10 Day NTE pursuant to section 88 of the Act.

The tenant testified that they personally served their evidence on July 24, 2017, to the landlord at the address where the landlord carries on business. The landlord confirmed that they received the tenants' evidence. In accordance with section 88 of the *Act*, I find the landlord has been duly served with the tenants' evidence.

At the commencement of the hearing, the landlord acknowledged that the tenants are no longer residing in the rental unit and that an Order of Possession is not required. The landlord withdrew their request for an Order of Possession.

Issue(s) to be Decided

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

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

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

Background and Evidence

The landlord gave evidence that a tenancy was entered into with the tenants which commenced on May 01, 2016, with a monthly rent of \$2,050.00, due on the first day of the month. The landlord provided a Notice of Rent Increase form showing the rent being increased to the current monthly rent amount of \$2,125.00, effective as of May 01, 2017. The landlord stated that the tenants' \$1,025.00 security deposit is still held by the landlord.

The landlord and tenant both provided evidence that the landlord sent an e-mail to the tenants on April 24, 2017, which reads as follows:

"I just wanted to make you aware that the owners are planning to occupy the house some time in the future. As 2 months' may not enough notice, particularly in today's market, the owners wanted to make you aware. They have no problem if you move out early. If not, sometime in the future we will send you a Two month Notice to Vacate."

The landlord testified and provided evidence that the tenants sent an e-mail to the landlord on May 01, 2017, informing the landlord that the tenants would be moving out effective as of June 1, 2017. The landlord stated that this notice to vacate from the tenants was too late to be effective for June 01, 2017.

The landlord provided evidence and the tenants testified that the monthly rent for May 2017 was unpaid as the tenants put a stop payment on the May 2017 rent check.

The landlord provided a signed copy of the 10 Day Notice which indicates rent in the amount of \$2,125.00 that was unpaid after it was due on May 01, 2017, with a stated effective vacancy date of May 20, 2017.

The landlord stated that, in consultation with the owner of the unit, they are only seeking the unpaid rent owing for May 2017 and are not pursuing rent owing for June 2017.

Tenant V.M. testified and provided evidence that there were numerous issues at the beginning of the tenancy and the tenants did not have a good relationship with the landlord. I questioned Tenant V.M. whether this testimony was relevant to the landlord's Application and the tenant stated that they just wanted to give some background information. I instructed Tenant V.M. that only evidence related to the landlord's application for unpaid rent would be considered at this hearing and the tenants are at liberty to submit their own application in the future for any remedies they choose to pursue regarding this tenancy.

Tenant V.M. testified that upon receiving the landlord's e-mail of April 24, 2017, the tenants called the landlord and asked when the landlord was planning on serving the Two Month Notice to End Tenancy. Tenant V.M. testified that the landlord informed the tenants that the Two Month NTE was going to be served before the end of the month. Tenant V.M. stated that the tenants were concerned about finding a new place, especially considering the tenants had plans to go on vacation from June 28, 2017, until July 20, 2017. Tenant V.M. stated that the tenants would have rather stayed at the rental unit but they felt that they had to find another place to rent due to the Two Month NTE they thought was going to be served. Tenant V.M. stated that the tenants signed for a new rental unit to move in on June 01, 2017. Tenant V.M. testified that they talked to the landlord after they had given their notice to vacate and the landlord informed them that the owners of the unit had changed their mind and were no longer planning on occupying the rental unit and would not be issuing a Two Month Notice NTE.

The landlord testified that the landlord never reached the stage where a date was provided to the tenants regarding a potential Two Month NTE. The tenant disagreed with this and stated that she had two phone conversations with the landlord that the Two Month NTE was going to be served at the end of the month.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

When a tenant is given a written notice to end tenancy on the approved form under section 49 of the *Act*, section 50 of the *Act* allows the tenants to give 10 days' written notice to end the tenancy early and section 51 of the *Act* entitles the tenants to receive an amount that is equivalent to one month's rent payable under the tenancy agreement.

I find the tenants did not provide any evidence that they were allowed to give the landlord early notice to end the tenancy or that they were entitled to deduct any amounts from their rent. Although the tenants stated that they were going to be given the Two Month Notice to End Tenancy, I find that no Two Month NTE was formally served to the tenants and the tenants are not entitled to any of the compensation or rights associated with section 49 of the *Act*.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,125.00 as per the tenancy agreement and the Notice of Rent Increase form. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Therefore, I find that the landlord is entitled to a monetary award in the amount of \$2,125.00 for unpaid rent owing for May 2017.

As the landlord continues to hold a security deposit of \$1,025.00, and in accordance with section 72 of the *Act*, I order the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the landlord in the amount of \$1,200.00 against the tenants as follows:

Item	Amount
May 2017 rent	\$2,125.00
Less Security Deposit	-1,025.00
Recovery of Filing Fee for this application	100.00
Total of Above Items	\$1,200.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 08, 2017

Residential Tenancy Branch