



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF
CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by one of the tenants. The landlord has applied as against 2 tenants for an Order of Possession and a monetary order for unpaid rent or utilities; and Order of Possession for cause and to recover the filing fee from the tenants for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause.

The landlord attended the hearing, gave affirmed testimony and was assisted by another person. 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 testified that one of the tenants vacated the rental unit on June 30, 2017 and the other tenant was served on June 23, 2017 by registered mail with the Landlord's Application for Dispute Resolution and notice of this hearing. Proof of such service has been provided by the landlord.

Since neither tenant has joined the call, I dismiss the tenant's application in its entirety without leave to reapply.

Since the landlord has only served the tenant who currently remains in the rental unit, I dismiss the landlord's claim as against the other tenant.

The hearing concentrated on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and no evidence was lead with respect to the One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Should the landlord be granted an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2016. The landlord entered into a tenancy agreement with the tenant (CM). Rent in the amount of \$800.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$300.00, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level.

The landlord further testified that rent was paid sporadically during the tenancy, and on April 7, 2017 the landlord personally served the remaining tenant 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 7, 2017 and contains an effective date of vacancy of April 17, 2017 for unpaid rent in the amount of \$1,600.00 that was due on April 1, 2017.

The tenant is currently in arrears of rent the sum of \$3,220.00, having made the following payments:

December's rent was paid in full. In January, the tenant paid \$300.00 on the 16th, an additional \$300.00 on a later date, and \$180.00 on the 21st, leaving \$20.00 owing. On February 14 the tenant paid \$100.00 and an additional \$100 on the 24th. On March 8 the tenant paid \$400.00 and an additional \$200.00. The landlord applied those payments to February's rent, and no rent was paid for March. In April the landlord collected \$400.00 which was applied to March's rent, and an additional \$100.00 was paid. No rent was paid for April and only \$400.00 was paid for each of May and June. No rent has been paid for July or August, 2017. The landlord also testified that the parties had agreed to apply the \$300.00 security deposit to February's rent, and the landlord's claim is \$3,220.00. The landlord further testified that the tenant also owes \$42.00 for a movie rental.

Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application for an order cancelling a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord. The *Act* also states that where a tenant fails to pay rent in full or dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5

days, the tenant is conclusively presumed to have accepted the end of the tenancy. Having dismissed the tenant's application to cancel the One Month Notice to End Tenancy for Cause, and considering that neither tenant has disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy for both notices given by the landlord have passed, I grant the Order of Possession on 2 days notice to the tenant.

I have reviewed the landlord's evidentiary material, and I accept the undisputed testimony of the landlord that the tenant is in arrears of rent as follows:

Month	Owed	Paid	Bal Due
Dec, 2016	\$800	\$800	0
Jan, 2017	\$800	\$780	\$20
Feb, 2017	\$800	\$500	\$320
Mar, 2017	\$800	\$600	\$520
Apr, 2017	\$800	\$500	\$820
May, 2017	\$800	\$400	\$1,220
June, 2017	\$800	\$400	\$1,620
July, 2017	\$800	0	\$2,420
Aug, 2017	\$800	0	\$3,220

The landlord has provided no evidence of movie rentals or the costs, and I dismiss that portion of the landlord's claim.

Since the landlord has been 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 tenant's application is hereby dismissed without leave to reapply.

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

I hereby 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 \$3,320.00.

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: August 10, 2017

Residential Tenancy Branch