



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR
DRI, MT, CNR, MNDC, MNSD, OLC, FF

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. The tenants' application disputes a rent increase, and seeks more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both landlords and one of the tenants attended the hearing. The tenant advised that the other tenant (SDD) is no longer a party to these proceedings. The landlords have not provided any evidence of service with respect to that tenant, and I dismiss that tenant's claims and dismiss the landlords' claims as against that tenant.

The parties who attended the hearing each gave affirmed testimony and were given the opportunity to question each other and give submissions.

During the course of the hearing it was determined that the tenants had disputed the notice to end the tenancy given by the landlord within the time prescribed, and no further time is required or sought.

Also, during the course of the hearing the landlords agreed that rent had been increased contrary to the *Act*, and seek compensation for unpaid rent, less the overpayment.

Also, during the course of the hearing the landlords disputed that the tenant provided the landlords with any evidentiary material. The tenant advised that the evidentiary material was placed on a bench by the landlords' door. The Rules of Procedure require each party to be prepared to demonstrate to the satisfaction of the arbitrator that the other party was

served with all evidence as required by the *Act* and the Rules of Procedure. The landlords disputed that they were provided with the material and the tenant has not been able to demonstrate otherwise. Therefore, I decline to consider the tenants' evidentiary material.

Issue(s) to be Decided

The issues remaining to be decided are:

- 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*?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?
- Has the tenant established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to rent increases?

Background and Evidence

The tenant testified that this fixed-term tenancy began on March 15, 2015 and expired on March 14, 2016 thereafter reverting to a month-to-month tenancy. This tenant alone still resides in the rental unit. Rent in the amount of \$2,000.00 per month was originally payable on the last day of each month, but was raised by the landlords 5% in a Notice of Rent Increase effective August 31, 2016. Copies of the tenancy agreement and Notice of Rent Increase have been provided as evidence by the landlords.

At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust by the landlords. The rental unit is a single family dwelling, and the other named tenant no longer resides in the rental unit.

The tenant further testified that the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 1, 2017 by taping it to the door of the rental unit, a foot from the tenant's head. The tenant tried to pay rent, less the increase as provided by Section 43(5), but the landlord refused the rent cheque. The tenant contacted the Residential Tenancy Branch and was advised to hang onto the money and the

Arbitrator would give instructions at this hearing. The tenant has opened a separate account for rent, but has not paid rent for July, August or September.

The first landlord (JC) testified that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 1, 2017. A copy has been provided for this hearing and it is dated July 1, 2017 and contains an effective date of vacancy of July 11, 2017 for unpaid rent in the amount of \$2,100.00 that was due on July 1, 2017.

The landlord further testified that the other landlord refused to take the tenant's rent because it was in the incorrect amount. On July 5, 2017 the landlord sent an email to the tenants agreeing that the landlords had over-charged for rent. However, no rent has been paid since the notice to end the tenancy was served.

The second landlord (PC) testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is still valid, in that no rent has been paid. The landlords made an effort to resolve this dispute in the terms that the tenant wanted, and now he's squatting.

Analysis

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*. In this case, the landlords acknowledge that an error was made with respect to the amount rent could legally be raised, however a landlord must not refuse rent, even if it is a lower amount than required. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenant failed to pay rent in the amount of \$2,100.00 that was due on July 1, 2017, and it was served on July 1, 2017. Because the landlord refused rent I am not satisfied that the landlord has established that an Order of Possession should be granted, and I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The parties agree that rent has been collected at a rate of \$42.00 per month over the allowable increase for a period of 10 months, and the tenant has established a claim of \$420.00. However, I accept the undisputed testimony that rent hasn't been paid for July, August or September, and I am satisfied that the landlords have established a claim for unpaid rent at the rate of \$2,058.00 for each of those months. If rent remains unpaid, the landlords are at liberty to issue another notice to end the tenancy.

The landlords recognized the error of the rent increase, and I order the landlords to comply with the *Act* with respect to future rent increases.

The tenancy has not yet ended, and therefore I dismiss the tenant's application for a monetary order for return of the security deposit. The tenant is at liberty to re-apply after the tenancy has ended.

Having found that the tenant is owed \$420.00 and the landlords are owed \$6,174.00, I find it prudent to set off the amounts, and I grant a monetary order in favour of the landlords for the difference of \$5,754.00.

Since both parties have been successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is dismissed and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 1, 2017 is hereby cancelled.

The tenant's application for a monetary order for return of the security deposit or pet damage deposit is hereby dismissed with leave to reapply.

I order the landlords to comply with the *Residential Tenancy Act* with respect to rental increases.

I hereby grant a monetary order in favour of the landlords as against the tenant (LAWD) pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,754.00.

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: September 14, 2017

Residential Tenancy Branch