



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL OPR

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date 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 and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, although late, and no one for the tenants joined the call. The landlord testified that each of the named tenants was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on October 2, 2017 and orally provided 4 tracking numbers assigned by Canada Post. The landlord was permitted to send to me proof of such service after the hearing concluded. I have now received copies of a Canada Post cash register receipt bearing that date and 4 Registered Domestic Customer Receipts and I am satisfied that all tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord gave affirmed testimony and provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord advised that the tenants have vacated the rental unit and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that he purchased the rental home and the Contract of Purchase and Sale specified vacant possession of the rental unit effective August 2, 2017, but the tenants didn't vacate the rental unit. The landlord advised the tenants that if they remained, rent would be \$5,000.00 per month but the landlord is not certain what amount of rent the tenants had been paying to the previous owner, and the tenants have not paid any rent to the landlord. The previous

owner had given the landlord names of the tenants residing in the rental unit, but the landlord did not get a tenancy agreement.

The tenants didn't pay any rent to the landlord, and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 18, 2017 by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated September 18, 2017 and contains an effective date of vacancy of September 28, 2017 for unpaid rent in the amount of \$12,500.00 that was due on September 1, 2017. The landlord testified that the amount is \$5,000.00 for each of August and September, 2017 as well as half a month's rent as a security deposit.

One of the tenants disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the hearing was scheduled for yesterday. The landlord did not attend the hearing.

The landlord also testified that the seller had given the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property, but they didn't vacate the rental unit until December 2, 2017.

The landlord seeks monetary compensation for receiving no rent from the tenants from the date the landlord took possession of the rental unit to the date the tenants vacated.

Analysis

I advised the landlord that I must consider the doctrine of *Res Judicata*, which precludes me from making any findings or orders that have already been adjudicated upon.

I have reviewed the Decisions of two Arbitrators regarding the rental unit. The first hearing was scheduled for September 13, 2017 and the resulting Decision is dated September 15, 2017. It shows that the landlord (seller) had appeared at the hearing concerning the landlord's application for an Order of Possession for cause, as well as an Order of Possession and a monetary order for unpaid rent, and no one for the tenant attended the hearing. Only one of the 4 tenants named in this application was named in the September 15, 2017 Decision. It also states that there was no written tenancy agreement; the tenancy began in 2015 and rent was \$2,100.00 per month payable on the 1st day of each month. No security deposit or pet damage deposit was collected, and the tenant had not paid rent when due since April 1, 2017, and \$12,600.00 was outstanding. The landlord was successful in obtaining a monetary order for that amount as well as recovery of the \$100.00 filing fee, but was not successful in obtaining an Order of Possession for unpaid rent because the landlord had not provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. With respect to the application for an Order of Possession for Cause, the Decision states:

"In addition, although the Landlord also applied for an order of possession based on a notice to end tenancy for cause, the notice provided with the Landlord's faxed evidence – specifically the second page – was not in the correct form. Rather, attached was the second page of a notice to end tenancy for landlord's use of property that had not been

completed. Again, I decline to grant an order of possession to the Landlord based on an invalid notice to end tenancy for cause. This aspect of the Landlord's Application is dismissed, without leave to reapply."

The second hearing was held on December 11, 2017 and the resulting Decision is dated December 12, 2017. It shows that another tenant, not named in the previous Decision but named in the application before me, had applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order limiting or setting conditions on the landlord's right to enter the rental unit, and to recover the filing fee from the landlord for the cost of the application. No one attended the hearing and the application was dismissed with leave to reapply.

The landlord in this case told the tenants that if they didn't leave, rent would be \$5,000.00 per month and nothing was paid by the tenants. However the hearing held on September 13, 2017 indicates that rent was \$2,100.00 per month. A landlord may not increase rent when purchasing a home that is tenanted. Further, the previous owner was a landlord who was successful in obtaining a monetary order for unpaid rent up to the end of September, 2017, and I cannot order that the tenant(s) be ordered to pay 2 landlords for the same rental unit for the same period of time. I find, in the circumstances, that the previous owner attempted to evict the tenants and provide vacant possession but was confused on the form to use. Where a landlord is not successful in obtaining an Order of Possession, the tenancy continues, and I find that the landlord in this case has established a monetary claim for unpaid rent in the amount of \$2,100.00 per month for each of the months of October and November, 2017.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,300.00.

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: December 14, 2017

Residential Tenancy Branch