



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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.

The landlord and the tenant attended the hearing, and the tenant was assisted by a person acting as an Advocate.

The landlord and the tenant each gave affirmed testimony and were given the opportunity to question each other. The tenant's Advocate also provided submissions, although not under affirmation.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month was payable on the 1st day of each month and was increased to \$565.00 in 2014. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level of the rental home is also tenanted. The landlord does not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant has not paid rent since July, 2017 and is currently in arrears the sum of \$2,825.00 for the months of August through December, 2017.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on August 2, 2017. A copy has been provided as evidence for this hearing and it is

dated August 2, 2017 and contains an effective date of vacancy of August 13, 2017 for unpaid rent in the amount of \$565.00 that was due on August 1, 2017. The landlord testified that the tenant has not paid any rent since the notice was issued, and the landlord seeks an Order of Possession and a monetary order for unpaid rent in the amount of \$2,825.00.

The tenant testified that he actually moved into the rental unit on February 1, 2013 because the rental unit wasn't ready before that.

The landlord increased rent by slightly higher than permitted but the tenant was okay with the increase. Rent has not been paid because the landlord has not dealt with neighboring tenants in the upper level of the rental home. The landlord automatically assumed that the tenants in the upper level told the truth, but never listened to the tenant about incidents. The tenants in the upper level were slamming around and making noise, so the tenant tapped on the wall to indicate they were being too noisy, and an incident between them started. The tenant called the police. The tenant didn't do anything wrong, and refused to pay rent because the landlord wouldn't deal with the problematic neighboring tenants. The landlord promised they would be out but has not taken steps to evict them.

The tenant also testified that he filed an application for dispute resolution and does not know whether or not it's set for hearing. The tenant only checks his mail once per month.

The tenant's Advocate submits that the tenant is aware that rent must be paid even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement, but the reality is the landlord has not dealt with the neighbours in a reasonable fashion.

During the course of the hearing, I found it necessary and reasonable to search for a dispute filed by the tenant. The automated system shows that the tenant filed an application for dispute resolution on August 8, 2017 seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order to recover the filing fee from the landlord, but the tenant's application was treated as abandoned because the tenant did not pay a filing fee or apply for a fee waiver.

Analysis

The reality is that I must uphold the law. The *Residential Tenancy Act* allows a tenant to make an application for dispute resolution if the landlord fails to comply with the *Act* or the tenancy agreement, or if the landlord fails to provide the tenant with quiet enjoyment of the rental unit, but the tenant may not refuse to pay rent. There is no defense in law respecting a tenant's failure to pay rent unless the tenant has received an order from the Residential Tenancy Branch or the landlord agrees in writing.

The *Act* also states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent or dispute the notice. If the tenant does neither, the

tenant is conclusively presumed to have accepted the end of the tenancy. I accept that the tenant filed the application for dispute resolution within the 5 days as required, and may have been confused of the process. However, failing to check mail for a month at a time may also be a contributing factor to not obtaining a hearing date for the application. In any event, the tenant agrees that he has not paid any rent and I find that the tenant is indebted to the landlord the sum of \$2,825.00 for unpaid rent from August to December, 2017 inclusive.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form as required by the *Act*. The tenant has not paid the rent, and the landlord is entitled to an Order of Possession. The landlord testified that he would be agreeable to negotiating an effective date of vacancy due to the holiday season approaching, and I leave it to the parties, however, since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

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

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord 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 \$2,925.00.

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 19, 2017

Residential Tenancy Branch