



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MND, MNSD, FF

Introduction

On October 10, 2017, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on issuance of a 2 Month Notice to End Tenancy for Landlord Use of Property ("the Two Month Notice"). The Landlord is also seeking a monetary order for unpaid rent and for damage to the rental unit and is requesting to keep the security deposit in partial satisfaction of the claim.

The matter was set for a conference call hearing. Both parties appeared at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damage?
- Can the Landlord keep the security deposit towards unpaid rent?

Background and Evidence

The parties testified that the tenancy began on December 15, 2015, as a one year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount

of \$900.00 is to be paid on the 15th day of each month. The Tenant paid the Landlord a security deposit in the amount of \$450.00.

The Landlord issued the Tenant a 2 Month Notice dated August 10, 2017. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The effective date shown on the 2 Month Notice is October 10, 2017.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Landlord testified that the Tenant has failed to move out of the rental unit.

The Tenant testified that she received the 2 Month Notice and did not dispute the Notice. The Tenant submitted that she has not moved out because she is unable to find another place to live.

As the effective date of the Notice has passed, the Landlord seeks an immediate order of possession. The Landlord testified that because it is Christmas, and the Tenant has a child, he is in agreement for the order of possession to be effective at the end of December 2017.

Rent

The Landlord testified that the Tenant has failed to pay the rent owing under the tenancy agreement. The Landlord testified that the Tenant owes \$2,950.00 in rent for the following months:

August 2107, in the amount of \$450.00

October 2017, in the amount of \$900.00

November 2017, in the amount of \$700.00

December 2017, in the amount of \$900.00

In response, the Tenant acknowledged that she has not paid the rent that the Landlord is seeking.

Damage

The Landlord testified that the Tenant is responsible for damage to the front door of the rental unit. The Landlord testified that the Tenant's husband came to the rental property and damaged the front door. The Landlord stated that he has not had the door replaced, but he has received a quote for the replacement cost of the door. The Landlord testified that the door is approximately six years old.

The Landlord testified that he has already received \$500.00 from the Tenant towards the damaged door. The Landlord is seeking \$2,246.40 for the replacement cost of the door. The Landlord provided color photographs showing damage to the door.

In response, the Tenant acknowledged that her boyfriend damaged the door by punching the door and denting it. The Tenant testified that the door works perfectly fine as it opens and closes properly and locks. The Tenant testified that she repaired the door jamb by sanding and painting it. The Tenant testified that she received a quote for the replacement of the door for \$1,450.00 that is less than the quote the Landlord provided.

The Tenant testified that there was some existing damage to the door when she moved into the rental unit. The Tenant provided color photographs showing the damage to the door.

Neither party provided a copy of a condition inspection report to show the condition of the door at the time of the move in.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days of receiving the Notice, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date set out on page 1 of the Notice.

The Tenant received the 2 Month Notice on August 10, 2017, and did not dispute the Notice within 15 days. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The tenancy has ended.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective at 1:00 pm on December 31, 2017. This order may be filed in the Supreme Court and enforced as an order of that Court.

Rent

I find that the Tenant owes the Landlord \$2,950.00 in unpaid rent. I award the Landlord the amount of \$2,950.00.

Damage

Based on the testimony and photographic evidence, I find that the door is not damaged to the degree that the Landlord is entitled to the full replacement cost of the door. The door is six years old and the damage appears to be mainly cosmetic. The Landlord has already received \$500.00 from the Tenant for damage to the door.

The Landlord's claim to recover the full cost of replacing the door is dismissed.

Security Deposit

I authorize the Landlord to keep the security deposit of \$450.00 in partial satisfaction of his claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim of \$3,050.00 comprised of \$2,950.00 for unpaid rent and \$100.00 for the cost of the filing fee. After setting off the security deposit of \$450.00 towards the award of \$3,050.00, I grant the Landlord a monetary order of \$2,600.00. This order may be filed in the Provincial Court (Small Claims) and

enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to dispute a 2 Month Notice To End Tenancy For Landlord's Use Of Property. I grant the Landlord an order of possession effective at 1:00 pm on December 31, 2017, after service on the Tenant.

The Tenant failed to pay the rent owing under the tenancy agreement. The Landlord is authorized to keep the security deposit in partial satisfaction of the claim for unpaid rent and I grant the Landlord a monetary order in the amount of \$2,600.00.

The Landlord's claim for then replacement cost of the front door is dismissed.

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 22, 2017

Residential Tenancy Branch