



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPR-DR
 CNR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. 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*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit or any other deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 15, 2017 and expires on June 15, 2018 and then the tenancy ends. Rent in the amount of \$950.00 per month is payable on the 1st day of each month. At the outset of the tenancy the

landlord collected a security deposit from the tenant in the amount of \$475.00 as well as a pet damage deposit in the amount of \$250.00 and a garage deposit of \$75.00, all of which are still held in trust by the landlord. The rental unit is a suite in the lower level of a home that contains another rented unit and the landlord resides in another unit of the home. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that rent has usually been paid in cash, however the tenant lost her job and told the landlord that she didn't know when she could pay rent for January, 2018. The landlord waited 12 days for the tenant to arrange finances, and upon receiving no rent the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in person on January 12, 2018, a copy of which has been provided for this hearing. It is dated January 12, 2018 and contains an effective date of vacancy of January 23, 2018 for unpaid rent in the amount of \$950.00 that was due on January 1, 2018. The tenant didn't pay the landlord until February 14, 2018 which was \$300.00 for part of January's rent, and the landlord gave the tenant a receipt that specifies that it was being accepted for use and occupancy only.

The tenant is currently in arrears of rent \$1,900.00 for February and March, 2018 rent, and the landlord seeks to keep the deposits in partial satisfaction, recovery of the \$100.00 filing fee, and would be content with an Order of Possession effective March 31, 2018.

The tenant testified that her last EI cheque was only for half of what the tenant expected so January's rent was late. The tenant had to go to Social Services and not much was allowable. The tenant got another job on March 1, 2018 and asked the landlord if she could pay February's rent by March 21 and would be all caught up by May 1, 2018. The tenant believed that ultimately that would be good for the landlord; he'd still have a tenant, rent would be paid each 2 weeks until May 1, and then arrears would be caught up. The tenant is not an irresponsible person, but the landlord didn't want to hear negotiations at all.

The tenant does not want to move out, and cannot afford moving expenses.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, and if the tenant fails to do so, the landlord may choose to end the tenancy by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the tenant does not

dispute it within 5 days or pay the rent in full within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenant disputed the notice but has not managed to have the means to pay the rent, and therefore, I must dismiss the tenant's application.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. 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 and contains information required by the *Act*. Therefore, the landlord is entitled to an Order of Possession. The landlord testified that if an Order of Possession is granted, the landlord would be content with an effective date of vacancy of March 31, 2018, and I so order.

With respect to the monetary claim of the landlord, the tenant does not dispute the amount of \$1,900.00 owed, and I find that the landlord has established that claim.

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

The landlord collected a \$75.00 garage fee, which is contrary to the regulations. A landlord may only collect refundable deposits for a security deposit, pet damage deposit or key fob.

The parties also agree that the landlord holds a \$475.00 security deposit and a \$250.00 pet damage deposit. I order the landlord to keep the security deposit, pet damage deposit and garage deposit in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference in the amount of \$1,200.00 ($\$1,900.00 + \$100.00 = \$2,000.00 - \$475.00 - \$250.00 - \$75.00 = \$1,200.00$).

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective March 31, 2018 at 1:00 p.m. and the tenancy will end at that time.

I further order the landlord to keep the deposits, and I 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 \$1,200.00.

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: March 15, 2018

Residential Tenancy Branch