



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENMARK INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR FFL
 CNR OLC FFT

Introduction

This hearing was convened by way of conference call concerning applications made by a landlord company and by the tenant, naming the landlord company and the building manager. The landlord company has applied by way of the Direct Request Process for an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application, which was scheduled for this participatory hearing. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

The landlord company was represented at the hearing by an agent, being the building manager who is also the individual named in the tenant's application. The tenant also attended the hearing accompanied by her spouse. The parties each gave affirmed testimony and were given the opportunity to settle this dispute, and to question each other.

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 tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this tenancy began on October 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is currently payable under the tenancy agreement 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 \$385.00

which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 33 apartments in a complex, and the landlord's agent also resides in the rental complex. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenancy agreement states, under paragraph 6: "Subject to clause 13, Additional Occupants: the tenant agrees that for each additional tenant or occupant not named in clause 1 or 2 above, the rent will increase by \$30.00 per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this Agreement or create a new tenancy."

The tenant has an additional occupant not named in the tenancy agreement, and has not paid the additional \$30.00 for the months of September or October, 2018.

On September 2, 2018 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated September 2, 2018 and contains an effective date of vacancy of September 12, 2018 for unpaid rent in the amount of \$30.00 that was due on September 1, 2018. The tenant has not paid the rent or the \$30.00 for the month of October, 2018.

The landlord's agent further testified that he was advised by the Residential Tenancy Branch that the tenant has disputed the Notice, but the tenant has not served the landlord with the application or any documentation.

The tenant testified that she didn't have time to serve the landlord. The tenant received the documentation only a day before the deadline to serve the hearing package, and the tenant had to go to work.

Analysis

The *Residential Tenancy Act* requires a party who files a dispute to serve the other party within 3 days of making the application.

In this case, the tenant testified that she hadn't received the documents to serve until the day before the deadline and didn't have time. The case file shows that the tenant paid the filing fee on September 6, 2018 and a Notice of Hearing was provided for service upon the landlord on September 11, 2018 by email with instructions that the Hearing Package must be served by September 14, 2018, however the tenant still has not served the landlord.

In the circumstances, I am not satisfied that the tenant has served the landlord in accordance with the *Residential Tenancy Act*, and I 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 provided as evidence by the landlord, and I find that it is in the approved form. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord for that amount, and I order that the landlord be permitted to keep \$100.00 of the security deposit currently held in trust, or may otherwise recover it.

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 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 \$100.00 and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

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: October 25, 2018

Residential Tenancy Branch