



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL OPU

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord, and co-owner, X,M.Y. attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was given to the tenant in person on December 1, 2019 while the Notice of Hearing and evidentiary package were given in person on December 15, 2019. Pursuant to sections 88 & 89 of the *Act* I find the tenant was duly served with all documents in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award including a return of the filing fee?

Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began on March 16, 2019. Rent was \$1,150.00 per month, plus 25% of utilities. A security deposit of \$575.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord is seeking an Order of Possession based on a 10 Day Notice issued on December 1, 2019 and a monetary award of \$300.00 due to damage to the property from a cat.

The landlord stated that the tenant has failed to pay rent and utilities in a timely and consistent manner. The landlord issued a notice for Unpaid Rent and Utilities on December 1, 2019 which stated the tenant owed \$1,420.00 in rent and \$360.00 in utilities. The landlord confirmed some rent had been paid for November and December 2019 but stated \$270.00 in rent remained outstanding for November 2019 and \$210.00 in rent remained outstanding for December 2019. The landlord confirmed no demand letter had been sent to the tenant seeking to recoup unpaid utilities but listed utilities as owing for March, May, June, September, October, November and December 2019. In their evidence, the landlords provided an audio file purporting to present a conversation between landlord and tenant regarding unpaid utilities.

The landlord submitted they further sought to end the tenancy because of the alleged presence of a cat in the rental unit (contrary to the terms of the tenancy agreement) and because of the unit's alleged occupation by the tenant's daughter and her boyfriend.

Analysis

Section 46(1) & (2) of the *Act* state, "A landlord may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice...a notice under this section must comply with section 52 [form and content of notice to end tenancy]." While section 46(6) states, "If a tenancy agreement requires the tenant to pay utilities charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section."

Section 52 of the *Act* states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find the landlord has failed to provide proof of the written demand for payment of any money owed for unpaid utilities. Furthermore, the landlord issued the Notice to End Tenancy on December 1, 2019 seeking unpaid rent for December 2019. As noted above, Section 46 states, "A landlord may end a tenancy if rent is unpaid on any day after it is due." I therefore find the Notice issued by the landlord related to unpaid utilities and December 2019 rent to be pre-emptive as the tenant had until midnight on December 1, 2019 to pay rent. There remains, however, the matter of unpaid rent for November 2019. During the hearing the landlord stated the tenant owed \$270.00 in unpaid rent for November 2019. As noted above, Section 52(e) requires that a notice to end tenancy must (when given by the landlord), be in the approved form.

I find the landlord's testimony to be inconsistent with the amount sought in the 10 Day Notice to End Tenancy. The landlord's figure of \$1,420.00 cited on the 10 Day Notice does not match with the amount owed for November 2019 of \$270.00. Furthermore, even if I were to include unpaid rent for December 2019 (\$210.00), the landlord was unable to provide a reasonable explanation as to how he arrived at the figure of \$1,420.00. For these reasons, I dismiss the 10 Day Notice.

In addition to an Order of Possession, the landlord's sought a monetary award of \$300.00 due to the alleged presence of a cat in the rental unit. Section 67 of the *Act* and establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Policy Guideline #16 notes, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. While the landlord has testified and produced a photo that a cat is in occupation of the rental unit contrary to the terms of the tenancy agreement, I find little evidence establishing the actual amount of loss sought in the application. For these reasons, I dismiss the landlord's application for a monetary award.

As the landlord was unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

The 10 Day Notice issued on December 1, 2019 is dismissed and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord's application for a monetary award of \$300.00 is dismissed.

The landlord must bear the cost of their own filing fee.

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: February 07, 2020

Residential Tenancy Branch