



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; MND

Introduction

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent and damages to the rental unit.

The parties gave affirmed testimony at the Hearing.

This matter was convened on July 24, 2012. At that time, the Landlord testified that he had served the Tenant with the Notice of Hearing documents by registered mail to her post office box. The Tenant acknowledged receipt of the documents.

Preliminary Matters

The Landlord did not provide a copy of the Notice to End Tenancy that he seeks to uphold in evidence.

Section 90 of the Act deems a document served by registered mail is received 5 days after mailing the document, whether or not the recipient chooses to accept delivery. However, the Tenant had not seen the Notice to End Tenancy when it was sent to her on June 12, 2012. Evidence to support either parties' position is important and must be given to the branch and to the other party. The Application for Dispute Resolution clearly states that if a dispute involves a Notice to End Tenancy, it **must** be submitted to the Residential Tenancy Branch.

The Landlord stated that he had served the Tenant with the Notice to End Tenancy issued June 12, 2012, by registered mail, but that it had been returned to him, unclaimed. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

The Tenant stated that she was recovering from an illness and that she would appreciate more time to prepare for the Hearing. Having determined that, if I find the Notice to End Tenancy is valid, the effective end-of-tenancy-date would be July 31, 2012, I saw no prejudice to the Landlord to adjourn the matter to a date in the very near future. Therefore, I adjourned the Hearing to July 30, 2012, at 1:00 p.m. and provided both parties with the date, time and sign-in information at the Hearing. I also directed

the Landlord to provide the Tenant and me a copy of the Notice to End Tenancy that he is seeking to have upheld, immediately.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

There is no written tenancy agreement. The Landlord testified that the tenancy started in August, September or October, 2009. The Tenant testified that the tenancy started in 2010, not 2009. The Landlord stated that he misspoke.

The Landlord stated that the Tenant “looked after the house for free” until March, 2011. The Tenant stated that she was in a relationship with the Landlord until September or October of 2011. The Landlord stated that they broke up in January, 2010, but that when the Tenant lost all her money in the stock market, he thought he would help her out by having her take care of his house until she was back on her feet.

The Landlord testified that the Tenant started paying rent in the amount of \$400.00 per month in March, 2011, and that when the Tenant got a job in September or October of 2011, they negotiated a new rent of \$650.00 per month, due on the first day of each month effective November 1, 2011.

The Tenant testified that rent was due on the 8th of each month, when the mortgage payment was due. She testified that she did not agree to the rent increase and that the Landlord illegally increased the rent.

The Landlord stated that rent did not include utilities. The Tenant agreed, but stated that she was never provided copies of the utility bills and therefore could not verify the amounts the Landlord was seeking for utility payments.

The Landlord testified that he was provided a Monetary Order for unpaid rent in the amount of \$2,200.00 at an earlier Hearing which took place on November 3, 2012. The Landlord stated that the Tenant has paid \$700.00 and now owes \$1,500.00 with respect to that Order.

The Landlord testified that the Tenant made the following payments towards rent since December 1, 2011:

Rent due	Rent paid	Utilities paid	Paid towards Monetary Order	Date paid
Dec 1/11	\$600.00	\$100.00		Dec 13/11
Jan 1/12	\$650.00	\$57.00	\$276.00	Cannot verify
Feb 1/12	\$600.00			Cannot verify
Mar 1/12	\$600.00		<u>\$300.00</u>	Mar 7/12
Apr 1/12	\$600.00	<u>\$100.00</u>		Apr 14/12
May 1/12	<u>\$600.00</u>			Cannot verify
TOTALS	\$3650.00	\$257.00	\$576.00	

The Landlord testified that the Tenant has not paid any rent for the months of June or July, 2012. The Landlord stated that he was prepared to accept only \$600.00 instead of \$650.00 for rent, but that he seeks a Monetary Order for unpaid rent for the months of June and July, 2012, in the amount of \$1,200.00.

The Tenant stated that she has not paid any rent for June or July, 2012, because the Landlord has breached Sections 32, 28 and 43 of the Act.

The Tenant testified that the house is clean and she denied causing any damage to the rental unit. The Tenant stated that the Landlord has filed his application out of, "animosity because we are split."

Analysis

Section 26 of the Act requires a tenant to pay rent **when it is due** whether or not the landlord complies with the Act, regulation or tenancy agreement, **unless the tenant has a right under the Act to deduct all or a portion of the rent.**

Part 3 of the Act provides when rent increases are allowed and the amounts. Rent can be increased once a year, a minimum of 3 months after a notice of rent increase in the approved form has been served on the Tenant. A rent increase may not be in excess of the amount provided in accordance with the regulations, unless the Landlord has an Order of the Director allowing more of an increase, or the Tenant agrees to the increase **in writing.**

The Landlord did not provide the Tenant with a Notice of Rent Increase. The Tenant did not agree to a rent increase in writing. The Landlord did not have an Order of the Director allowing an increase in excess of the amount allowed by the regulations. The maximum allowed for 2012 is 4.3%. Therefore, I find that the Landlord imposed an illegal rent increase and that any amount the Tenant has paid in excess of \$400.00 per

month may be deducted from rent owed to the Landlord, pursuant to the provisions of 43(5) of the Act. I find that the Tenant has overpaid rent, calculated as follows:

Amount paid December 1, 2011 to May 1, 2012 (pursuant to Landlord's calculations above)	\$3,650.00
Amount of rent due from December 1, 2012 to May 1, 2012 (6 months x \$400.00)	<u>-\$2,400.00</u>
AMOUNT OVERPAID	\$1,250.00

Therefore I find that, pursuant to the provisions of Section 43(5) of the Act, the Tenant does not owe any rent for the months of June and July, 2012. The Landlord's application for a monetary order in the amount of \$1,200.00 for unpaid rent is **dismissed**.

The Landlord's Application identified the reason for ending the tenancy as "the Tenant has not paid rent or utilities" which would require serving the Tenant with a 10 Day Notice for Unpaid Rent or Utilities. However, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause (the "Notice"). **On the Notice, the Landlord indicates the following reasons for ending the tenancy:**

- **Tenant is repeatedly late paying rent.**
- **Tenant has caused extraordinary damage to the unit or property.**
- **Tenant has not done required repairs of damage to the unit.**

The onus is on the Landlord to provide sufficient evidence that the tenancy should end **for the reasons given on the Notice**.

The Landlord testified that rent is due on the first day of each month. The Tenant testified that rent is due on the 8th day.

Section 13(1) of the Act states, "A Landlord **must** prepare in writing every tenancy agreement entered into on or after January 1, 2004." Section 13(2)(v) requires a tenancy agreement to include, "the day in the month or in the other period on which the tenancy is based, on which the rent is due."

In this case the Landlord did not prepare a written tenancy agreement as required by the Act, the Tenant disputes that rent is due on the first of the month, and therefore I find that the Landlord had provided insufficient evidence that rent is due on the first of the month. However, the Tenant testified that rent is due on the 8th day of each month. She did not dispute the Landlord's testimony with respect to when rent was paid for December, 2011 to May, 2012. Therefore, I find that the Landlord has established that

the **Tenant has been late paying rent twice** (December 13, 2011 and April 14, 2012). Residential Tenancy Branch Policy Guideline 38 provides that **three late payments are the minimum number sufficient to qualify for repeated late payment of rent.**

The Landlord provided no evidence that the Tenant had not done required repairs to the rental unit or that the Tenant had caused extraordinary damage to the rental unit or the property.

For the reasons stated above, I find that the Landlord has provided insufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy issued June 12, 2012. The Landlord's application for an Order of Possession is **dismissed.**

The Landlord provided no evidence to support his claim for a monetary order for damage to the rental unit or property. This portion of his application is **dismissed.**

Conclusion

The Landlord's application is **dismissed in its entirety.**

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: July 31, 2012.

Residential Tenancy Branch