



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for 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 tenants for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 5, 2013, the tenants did not attend. The landlord testified that the documents were served on that date and in that manner, and that both tenants had been individually served. The landlord also provided copies of the Canada Post receipt and registered mail tracking numbers for both tenants, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes, and the only participant who joined the conference call hearing was the landlord.

During the course of the hearing the landlord stated that the tenants have vacated the rental unit, and as such, the landlord withdraws the application for an Order of Possession.

The landlord filed the Landlord's Application for Dispute Resolution on February 1, 2013 claiming an Order of Possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of the application. The landlord filed an amended application on February 15, 2013 claiming the same relief in addition to an order permitting the landlord to keep all or part of the pet damage deposit or security deposit. During the course of the hearing, the landlord

withdrew the application for an order to keep all or part of the pet damage deposit or security deposit, stating that none had been paid by the tenants, and the landlord had been advised by an Information Officer of the Residential Tenancy Branch to include that application. I accept the landlord's testimony that an Information Officer of the Residential Tenancy Branch advised the landlord to include an application for an order permitting the landlord to keep the security deposit, however it's not clear why the landlord did not explain to the Information Officer that no security deposit had been collected. Certainly that would have had a bearing on what the landlord actually applied for, however, the withdrawal was allowed.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The only issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 23, 2012 and was to expire after 6 months, but no written tenancy agreement exists. The tenants did not pay rent for the month of September, 2012, and the tenancy ended on February 13, 2013 when the tenants moved out of the rental unit, without any notice to the landlord. On February 12, 2013 the landlord saw a U-Haul at the rental unit, and on February 13, 2013 no one was around at the rental unit. On the 14th of February, the tenants were fully moved out.

Rent in the amount of \$1,700.00 per month was payable in advance on the 1st day of each month, and the landlord testified that no security deposit or pet damage deposit was collected. The rent included cable TV, phone and internet.

The tenants were given a credit of \$200.00 toward rent for the month of October, 2012 by the landlord in exchange for the tenants installing a door in the rental unit, but the tenants never installed it.

The landlord further testified that the tenants did not pay any rent at all for the month of November, 2012, and on December 3, 2012 the tenants only paid \$300.00 for rent.

On December 17, 2012 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the tenants by registered mail and provided a copy of the notice for this hearing. The notice states that the tenants failed to pay rent in the amount of \$3,100.00 that was due on the 1st of December, 2012 and contains an expected date of vacancy of December 21, 2012. The notice is signed by the landlord and dated December 10, 2012. A copy of the Canada Post Track History was provided showing that Xpresspost mail was accepted at the Post Office on December 17, 2012.

The landlord also provided a copy of a letter dated December 10, 2012 from the landlord addressed to the tenants which demands payment of rent in the amount of \$3,100.00 on or before December 21, 2012, and states that the landlord would be terminating all telephone and internet connections on December 21, 2012. The landlord cancelled the TV in mid-November, 2012 and the phone and internet were cancelled by the landlord in mid-December, 2012.

The landlord also served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail on February 5, 2013. A copy of the notice was provided for this hearing, and it is addressed to the tenants, contains the address of the rental unit, and is signed and dated by the landlord on January 28, 2013. The notice contains an expected date of vacancy of April 1, 2013. Page 2 of the notice contains the reason for issuing it, being that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse. The landlord testified that the landlord had intended to move into the rental unit on or about April 1, 2013 and wanted to ensure the tenants vacated at the end of the fixed term, being March 31, 2013. The landlord has crossed out the portion on page 2 of the notice that speaks to compensation for tenants, and the landlord has written upon that portion, "N/A due to the fact that tenant knew rent was for 6 months."

The landlord has also provided a form of tenant ledger for the rental unit which indicates that a previous application was filed by the landlord on December 3, 2012. A hearing had been scheduled with respect to the parties in this case, which was dismissed with leave to reapply. Neither the landlord nor the tenants attended that hearing. The document also shows that the tenants paid \$410.00 on October 1 and \$390.00 on October 19. Another entry shows a payment of \$300.00 on December 3. The document contains an address, which is not the same address as the dispute address on the Landlord's Application for Dispute Resolution.

The landlord claims \$1,700.00 for November's rent and \$1,400.00 for December's rent.

Analysis

Firstly, with respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property, a landlord may not cross out sections on the approved form and may not arbitrarily decide not to provide a tenant with compensation that is required under the *Residential Tenancy Act* for any reason. The landlord testified that the tenancy was for a fixed period of time which gave the landlord a right to end the tenancy once the fixed term expired, but there is no evidence of that whatsoever. The landlord did not cause a tenancy agreement to be entered into by the parties in writing, and the tenants did not attend the hearing, and therefore, I have no evidence before me that the tenants agreed to any fixed term. Further, if the parties had entered into a written tenancy agreement which set out the fixed term, the landlord would be entitled to occupy the rental unit at the end of the fixed term without the requirement of serving a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord did issue the 2 month notice, and the *Act* requires a landlord who issues such a notice end tenancy to provide compensation to the tenants in an amount equal to the monthly rent payable. Therefore, if I were to award a monetary order in favour of the landlord, the monetary order would have to take into account the compensation referred to in the *Act*.

The landlord testified and provided evidence of having served the Landlord's Application for Dispute Resolution by registered mail on February 5, 2013 and also testified that the 2 Month Notice to End Tenancy for Landlord's Use of Property was also served by registered mail on that date.

I also note that the landlord's letter to the tenants dated December 10, 2012 demanding payment of rent in the amount of \$3,100.00 on or before December 21, 2012, also states that the landlord would be terminating all telephone and internet connections on December 21, 2012, however, according to the landlord's testimony, the TV was already cancelled in mid-November, 2012 and the phone and internet were cancelled by the landlord in mid-December, 2012.

I question whether or not the landlord has provided correct evidence with respect to the dates that certain events occurred. Did the landlord serve the 2 month notice with the application for dispute resolution? Did the landlord cancel the TV, phone and internet before the tenants received the landlord's letter? A landlord is not permitted by law to cancel a service or facility unless the landlord gives 30 days' written notice, in the approved form, of the termination, and must reduce the rent in an amount that is equivalent to the reduction in the value of the service or facility. There is no evidence before me that 30 days' written notice in the approved form, or in any form, was provided, or that rent had been reduced for the loss of such services.

With respect to the landlord's application for a monetary order for unpaid rent or utilities, I am concerned that there is very little evidence that any tenancy existed. The landlord

has provided 2 notices to end tenancy that the landlord testified were served on the tenants and a letter written to the tenants demanding payment of rent. However, there is no response from the tenants respecting either notice or from the letter that the tenants even acknowledge that a tenancy was created. The landlord also provided a copy of a tenant's ledger, which is not clear on its face, and contains a different rental unit address than the address on the Landlord's Application for Dispute Resolution.

A tenancy exists by the payment of rent or the collection of a security deposit, but I have no evidence before me other than the landlord's testimony that the tenants paid a portion of the rent for December, 2012 and that the tenants paid rent in October, 2012. In the circumstances, I am not satisfied that the landlord has proven that a tenancy existed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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 05, 2013

Residential Tenancy Branch

