



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Porte Realty Ltd.
and [tenant name suppressed to protect privacy]

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.

An agent for the landlord company attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on February 25, 2014, neither of the tenants attended. The landlord's agent testified that the documents were in one envelope addressed to both named tenants which was hand delivered to one of the tenants on that date. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the hearing was the landlord's agent.

The *Residential Tenancy Act* specifies that when making a monetary claim as against tenants, each tenant must be individually served. Therefore, I find that the tenant who was hand-delivered the documents has been served in accordance with the *Residential Tenancy Act*, and the monetary claim as against the other tenant is hereby dismissed.

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

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 15, 2013 and was to expire on September 30, 2014, however the tenants moved out of the rental unit on or about March 1, 2014. Rent in the amount of \$895.00 per month was payable under the tenancy agreement, a copy of which has been provided, on the 1st day of each month in addition to \$30.00 per month for parking 2 vehicles. On September 3, 2013 the landlord collected a security deposit from the tenants in the amount of \$447.50 which is still held in trust by the landlord.

The landlord's agent further testified that the tenants failed to pay rent when it was due for February, 2014 and the landlord agreed to accept the rent on February 15, 2014 but the tenants still did not pay. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 15, 2014 and personally served a copy on one of the tenants on that date with a witness present, and has provided a copy for this hearing. The notice is dated February 15, 2014 and states that the tenants failed to pay rent in the amount of \$925.00 that was due on March 1, 2014, and contains an expected date of vacancy of February 15, 2014. Also provided is a Proof of Service document dated February 15, 2013 which states that one of the tenants was personally served with the notice on February 15, 2012. The landlord's agent testified that the dates are errors and all events occurred in 2014.

Another tenant and a neighbour of these tenants advised the landlord's agent on March 1, 2014 that the tenants were seen moving their belongings out of the rental unit via the back door. The landlord's agent attended the rental unit the next day and posted a notice to inspect the rental unit on March 2, 2014. When the landlord's agent arrived on March 2, 2014, no one was at the rental unit and it appeared to be abandoned. There was debris, or garbage left in the rental unit, as well as baby clothes laying about, a small table, a metal bed frame and 2 drawers from a dresser or some sort of cabinet.

The tenants have still not paid the rent, and the landlord seeks an Order of Possession and a monetary order for rent and parking fees for February, 2014 as well as recovery of the \$50.00 filing fee for the cost of this application.

Analysis

Firstly, with respect to the application for an Order of Possession, the notice to end tenancy appears to have been issued before rent was due. I accept the testimony of the landlord's agent that the dates are errors, however I find that the number of errors have invalidated the notice to end tenancy. Therefore, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's agent also testified that a neighbour advised the landlord's agent on March 1, 2014 that the tenants were seen moving, and in the absence of any evidence to the contrary, I accept that testimony, and I find that the tenancy ended on March 1, 2014 by way of abandonment by the tenants. During the course of the hearing, I authorized the landlord to change the locks to the rental unit.

With respect to the monetary order, I find that the tenants remained in the rental unit for the month of February, 2014 without paying rent or parking fees as agreed to in the tenancy agreement made September 3, 2013 and the landlord has established a monetary claim as against the tenant who was served with the Landlord's Application for Dispute Resolution and notice of hearing documents on February 25, 2014 in the amount of \$925.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I hereby order the landlord to keep the \$447.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$527.50.

Conclusion

For the reasons set out above, I hereby 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 \$527.50.

Having found that the tenants have abandoned the rental unit, I hereby authorize the landlord to change the locks to the rental unit.

The landlord's application for an Order of Possession is hereby dismissed.

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, 2014

Residential Tenancy Branch

