



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF
MT, CNR, MNDC, O

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 tenant for the cost of the application. The tenant has applied for more time to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord company attended the hearing, and the landlord's agent called 2 witnesses. The parties and the witnesses each gave affirmed testimony and the parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the tenancy will end on November 30, 2014 at 1:00 p.m. and the landlord will have an Order of Possession effective that date and time. The parties further agree that the move-out condition inspection report will be completed at 1:00 p.m. on November 30, 2014 without the necessity of the landlord providing the tenant with at least 2 opportunities to schedule the inspection as set out in the *Residential Tenancy Act*.

Issue(s) to be Decided

The issues remaining to be decided are:

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

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for late fees?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for aggravated damages for loss of quiet enjoyment?

Background and Evidence

The landlord's agent testified that the landlord company purchased the rental building about 2 ½ years ago and the tenant was a tenant at that time. The landlord's agent is not certain whether or not there is a written tenancy agreement or if a move-in condition inspection report was completed at the outset of the tenancy, but testified that it is a month-to-month tenancy. Rent in the amount of \$565.00 per month is payable in advance on the 1st day of each month. The landlord at the time that the tenancy commenced collected a security deposit from the tenant in the amount of \$282.50 which is currently held in trust by the current landlord company.

The landlord's agent further testified that the tenant has not paid rent for the months of August, September or October, 2014. A tenant ledger has also been provided which shows the amounts credited and debited from the tenant's account. The ledger shows that the tenant is in arrears \$1,805.00. The landlord testified that late fees have been posted to the account, and the tenant was credited a sum for a rent increase charged that was not in accordance with the *Residential Tenancy Act*.

The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated August 6, 2014 and contains an expected date of vacancy of August 16, 2014. The notice states that the tenant failed to pay rent in the amount of \$625.00 that was due on August 1, 2014. The tenant further failed to pay rent for the month of September, 2014 and now October's rent is overdue. The ledger includes late fees for August and September, but not for October. The tenant last paid rent in July, 2014 and is now in arrears of rent the sum of \$1,805.00 and the landlord claims that as against the tenant.

The landlord's agent further testified that rent is normally paid by placing a cheque in a drop-box located in the rental complex. Two employees of the landlord check it daily. The tenant also has the option of taking the rent to the landlord's office, but that is not within the rental complex. The tenant claims that she mailed the rent for August and September and accuses the landlord's agents and employees of mishandling the money and evading the collection of rent.

The parties had a hearing in September, 2014 wherein the tenant testified that she mailed the rent money. The hearing involved the tenant's application for a monetary

order and other relief which was dismissed by the Arbitrator. Also, a hearing was conducted in February, 2014 wherein the tenant had also applied for a monetary order. The landlord's agent has read the tenant's claim for this hearing and does not agree that there is any merit to it and previous applications by the tenant have been dismissed.

The landlord's first witness testified that she is an employee of the landlord, and does the paperwork, such as completing notices to end tenancy, preparing hearing packages for arbitration. Another employee completes the data entry to the tenant ledgers and the witness relies on those ledgers when completing forms. The witness testified that the ledger shows that the tenant made a short payment in March and in June, 2014, having paid only \$515.00 for each of those months, and has not paid rent for August, September or October. The witness completed the Landlord's Application for Dispute Resolution, but another employee took it to the Residential Tenancy Branch for filing and the amount of the monetary claim was changed from \$625.00 to \$1,875.00. The witness believes that there was an error made by multiplying \$625.00 by 3 months, when the equation ought to have been \$565.00 for 2 months, plus \$625.00 for the previous amount outstanding. The total owing is \$1,755.00. The witness has no recollection of the landlord ever losing a cheque, and the landlord's agents learned that the tenant had mailed the August and September cheques during the September 11, 2014 hearing.

The witness testified that rent is usually paid by the tenant dropping a cheque in the mail slot in the building and one of 2 cleaners check the box regularly. There are about 109 rental units within the complex over 17 floors.

The landlord's second witness testified that she is the property administrator and is primarily responsible for accounting by collecting rent and posting data into the system and commenced work for the landlord in April, 2014. The witness stated that there is evidence of a short payment of rent on March 3, 2014 and again on June 24, 2014. The ledger also reflects a credit of \$160.00 because rent was increased on the ledger but was not increased in accordance with the *Act*, so the witness reversed those increases which amount to \$160.00. Also, previous late fees were reversed on June 25, 2014 and the only late fees in question are for August and September, 2014. No rent has been received for August, September or October, 2014. The tenant advised that it was put in the mail but the witness checks the mail daily and has never received the cheques for August or September. The witness asked the tenant where her rent was, and testified that she has never refused rent.

The tenant testified that the *Act* states that if the rent is sent by mail it's deemed to have been received 5 days later. The tenant sent both cheques for August and September's rent in one envelope 5 days before the first of August because the tenant knew she was going to be away and was thinking in advance. The cheques have not been returned by Canada Post to the tenant and the money has not come out of her account. The

landlord has a habit of issuing notices to end tenancy and if the tenant is away for work or holiday, the tenant is deemed to be served with the notice 3 days after the landlord says it was placed there, and the tenant is constantly harassed by the landlord's continuous notices. The tenant has provided copies of 4 notices, and stated that it has caused the tenant a lot of stress and anxiety and causes the tenant to have to put stop-payments on cheques at an additional cost, re-issue cheques, and dealing with this tenancy should not be a full-time job. It always happens on a long weekend. The landlord continuously loses cheques and blames the tenant for not paying rent on time. On one occasion, the landlord posted a notice to end the tenancy the same day the landlord deposited the tenant's rent cheque. Copies of rent cheques and bank statements have also been provided.

The tenant has lost her job as a result of the continuous issues in dealing with the tenancy and has provided a copy of a letter addressed to the tenant advising that her employment is terminated due to the tenant's "...working schedule and impact of training schedule on her personal schedule and its effects on her well being."

The tenant further testified that she cannot stay in the rental unit due to the landlord's actions. The landlord's property manager told the tenant on February 8, 2014 that the tenant had to leave because the tenant wouldn't be happy there.

The tenant also testified that at Easter time, the landlord evicted about half of the tenants who live in the tower of the rental complex. The tenant contacted her MLA and the landlord's agents have targeted the tenant as a result. At a previous hearing the Arbitrator ordered the landlord to revert to the original tenancy agreement and allow tenants to pay rent in the drop-box, and the MLA wrote a letter to the landlord stating that it was unreasonable to require tenants to travel to a different building to pay rent. The landlord posted a notice giving tenants a 2 hour window to pay rent. A copy of the notice has been provided and it states: "Please be advised our office will be open extended hour(s): SATURDAY, 1 MARCH 2014 8:30 AM TO 10:30 AM to accept payment(s) for March rent."

The tenant also testified that at previous hearings, the notices to end the tenancy have been over-turned, and the tenant's applications for monetary orders were dismissed. The Arbitrator for those hearings had very little patience and said the facts weren't relevant.

The tenant also testified that two more hearings are scheduled before the Residential Tenancy Branch on November 10, 2014 and December 16, 2014, and that several more issues have not yet been heard.

During the hearing, the landlord asked if the hearings scheduled for November and December will be cancelled in light of the fact that the parties have agreed to end the tenancy. I advised the parties that I will not be dealing with those matters, nor will I make any findings with respect to those claims at this time.

Analysis

Firstly, dealing with the landlord's application for a monetary order for unpaid rent, the tenant does not deny that the money has not come out of her account, and I am satisfied that the landlord has established a claim for 3 months of rent, being August, September and October, 2014 for \$1,695.00. I also find that the tenant paid \$515.00 for rent for each of the months of March and June, 2014 leaving a balance of \$100.00 owing for those months.

With respect to late fees, a landlord may not charge late fees unless the tenancy agreement specifically specifies that late fees are payable, and may only charge a fee for the amount the landlord is charged by the financial institution for N.S.F. cheques. I find that the landlord has failed to establish that any such agreement exists and has failed to provide any evidence of bank charges for an N.S.F. cheque. In reviewing the tenant ledger I find that the landlord charged late fees and reversed them up until May, 2014. The late fees that have not been reversed in the ledger are for June 11, 2014 and a fee for insufficient funds the same month. Further late fees show on the ledger for August and September, 2014. I find that the tenant is entitled to recover \$100.00 as a credit to the account.

With respect to the tenant's application for a monetary order, I have read the previous Decisions from the February and September hearings. The first Decision shows that the tenant had applied for a monetary order for money owed or compensation for damage or loss, and the application was dismissed. The Decision does not indicate what exactly the tenant had applied for and the tenant abruptly exited the conference call hearing.

The second hearing was convened as a result of the tenant's application for a monetary order for damage or loss as well as other relief. The Decision refers to the first hearing, and the Arbitrator found that res judicata applied with respect to the application but not to the monetary claim, and the tenant's application was allowed to proceed. The Decision also states: *"Upon consideration of the totality of generalized issues brought forth by the Tenant, I find the Tenant has submitted insufficient evidence to prove the Landlord has breached the Act, by issuing notices or by entering her unit in breach of section 29 of the Act. Therefore, I find the Tenant has failed to prove entitlement to monetary compensation, and that claim is dismissed."*

The September, 2014 Decision specifies that the tenant had applied for monetary compensation for the landlord's continuous posting of notices to inspect the rental unit. I find that to be different circumstances than the tenant's application in this hearing, in that the tenant's claim, although vague, appears to be for monetary compensation for the landlord's poor bookkeeping and losing the tenant's cheques resulting in numerous notices to end the tenancy for unpaid rent. Although the circumstances are somewhat different, I also note that the testimony of the tenant in the September 11, 2014 hearing was that the tenant lost her job due to the landlord issuing notices to enter the property. In this hearing, the tenant stated that she lost her job for having to deal with the tenancy

as a full time job due to the landlord posting notices to end the tenancy for unpaid rent when the tenant isn't home to receive them, causing her to fear that she won't have a home to return to. No dates were mentioned and therefore I am not clear on whether or not that matter ought to have been contemplated by the tenant or adjudicated upon in the September, 2014 hearing.

In reviewing the tenant's evidence, the landlord issued a notice to end the tenancy in April, 2013, January 3, 2014 and 2 notices in August, 2014. The tenant ledger provided by the landlord shows that the tenant paid rent on April 9, 2013 and January 3, 2014. Although I accept that the notice issued in January was issued the same day that the tenant paid rent, I cannot find that the landlord has continuously issued notices to end the tenancy contrary to the *Act* or with any malice or ill intent other than to collect rent that the landlord was entitled to collect. The tenant told the landlord the cheques were in the mail and the landlord didn't receive them. The landlord has a right to issue notices to end the tenancy in such circumstances. I find that the tenant has failed to establish any monetary claim as against the landlord and the application is dismissed.

The tenant also testified that at previous hearings the landlord's notices to end the tenancy were overturned. I do not accept that testimony; only the February, 2014 hearing dealt with a notice to end tenancy, and both applications were filed by the tenant and were dismissed.

Having found that the landlord is owed \$100.00 for March and June's rent and the tenant is entitled to recover \$100.00 for late fees and bank charges, I find that those amounts should be set off from one another, and I find that the landlord has established a claim in the amount of \$1,695.00 in unpaid rent to the end of October, 2014.

The landlord has also applied to keep the security deposit in partial satisfaction of the claim and I so order. The landlord holds a security deposit in the amount of \$282.50 which I order the landlord to keep and I grant the landlord a monetary order for the difference of \$1,412.50. This does not waive the tenant's obligation to continue to pay rent to the end of the tenancy.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective November 30, 2014 at 1:00 p.m., by consent.

I further order the parties to conduct a move-out condition inspection report on November 30, 2014 at 1:00 p.m. without the necessity of the landlord providing the tenant with 2 opportunities to schedule the inspection, by consent.

I hereby order the landlord to keep the security deposit of \$282.50 and I 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 \$1,412.50.

The balance of the applications is hereby dismissed without leave to reapply.

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 03, 2014

Residential Tenancy Branch

