



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants ("tenant KH" and "tenant BR") did not attend this hearing although it lasted approximately 43 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Matters

I requested that the landlord provide me with a copy of the tenancy agreement after the hearing, as she had not included one in her Application. I received a copy of this tenancy agreement prior to writing this decision. The tenancy agreement indicates that "MD" is the landlord for this rental unit. The landlord confirmed during the hearing that MD is her husband and she made this application also on his behalf, as he was out of town. MD and tenant KH signed the tenancy agreement on May 1, 2013. The landlord testified that she was also a landlord for this rental unit and she dealt with both tenants personally. The landlord also indicated that she received a post-dated rent cheque, dated December 1, 2014, from tenant KH, which is addressed to this landlord only, not MD. I requested and received a copy of this cheque after the hearing. Accordingly, I find that the landlord named in this application is also a landlord for this tenancy.

The landlord testified that tenant BR telephoned her from the hospital and advised her that he had already left the rental unit because tenant KH asked him to leave. The landlord does not recall the date that tenant BR left, but stated that it was prior to tenant KH leaving. The tenancy agreement does not name tenant BR as a tenant or an occupant and tenant BR did not sign the

agreement. Only tenant KH is named in the tenancy agreement and signed it. The post-dated rent cheque from December 2014 only has tenant KH's name and signature on it, not tenant BR's information. Accordingly, I am not satisfied that tenant BR is a "tenant" at this rental unit and I do not find that a tenancy exists between the landlord and tenant BR.

Therefore, I do not make any monetary orders against tenant BR in this decision. This decision refers only to tenant KH and the orders made against her.

During the hearing, the landlord testified that she was withdrawing her application for an order of possession, as the tenants had already vacated the rental unit. The landlord stated that she was advised by the occupants of the basement rental unit that tenant KH left on December 31, 2014 or January 1, 2015. The landlord stated that she could not attend the rental unit until January 7, 2015, because of a death in her family. The landlord testified that she entered the rental unit and determined that all of the tenants' belongings were removed, so she changed the locks and took back possession on January 7, 2015. The landlord stated that she did not have time to clean the rental unit to date, and that she had not yet advertised the unit for rent. Accordingly, the landlord's application for an order of possession is withdrawn.

Service of Documents

The landlord gave sworn testimony that she served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 18, 2014 ("10 Day Notice"), by posting it to the rental unit door on the same date. The landlord testified that she telephoned tenant KH to advise her that she wanted to give her a 10 Day Notice, but that tenant KH told her to put the notice on her door. In accordance with sections 88 and 90 of the *Act*, I find that tenant KH, the sole legal tenant in this tenancy, was deemed served with the 10 Day Notice on December 21, 2014, three days after its posting.

The landlord testified that she served both tenants with the Application for Dispute Resolution hearing package ("Application") on December 30, 2014, by way of registered mail to the rental unit. She provided two tracking numbers orally during the hearing. The Canada Post website indicates that the packages were returned to sender, as they were not picked up by the recipients. The landlord confirmed that when she attended at the tenants' rental unit after serving the Application, she saw a Canada Post pick-up notice located inside their rental unit. In accordance with sections 89 and 90 of the *Act*, I find that tenant KH was deemed served with the landlord's Application on January 4, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from tenant KH?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2013. Monthly rent in the amount of \$1,200.00 is payable on the 1st day of each month. A security deposit of \$600.00 was paid and the landlord testified that she already applied this deposit towards August 2014 rent.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,800.00 was due on December 1, 2014. The landlord testified that this amount includes unpaid rent of \$600.00 for August 2014 and unpaid rent of \$1,200.00 for December 2014. The notice does not indicate an effective move-out date. The landlord stated that no rent payments have been made by the tenant(s) since the 10 Day Notice was served.

The landlord initially sought a monetary order of \$3,000.00 total for unpaid rent. She stated that \$600.00 is unpaid for August 2014 rent and \$1,200.00 is unpaid for each of December 2014 and January 2015 rent.

During the hearing, the landlord withdrew her claim for January 2015 rent in the amount of \$1,200.00, stating that she only applied for this rent because she was told to do so by the Residential Tenancy Branch. The landlord applied for this amount on December 30, 2014, prior to the rent becoming due, as a monetary loss. Accordingly, the landlord's application for a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, is withdrawn.

Therefore, the landlord amended her application to seek \$1,800.00 total for unpaid rent for August and December 2014.

The landlord testified that the tenants failed to pay rent of \$600.00 in August 2014. The landlord stated that tenant KH complained about noisy neighbours in the duplex unit beside her in August 2014. Due to these complaints, the landlord testified that she agreed to allow tenant KH not to pay \$600.00 in rent for this month and to use the security deposit of \$600.00 to cover the other half of the total rent of \$1,200.00 for August 2014. The landlord stated that although she initially agreed to waive \$600.00 in rent after she applied the security deposit to the other portion of rent, she was seeking this amount now. The landlord indicated that she is seeking this amount because she is upset that tenant KH complained so much during the tenancy and tenant KH did not advise her that she was leaving the rental unit.

The landlord testified that tenant KH advised her that she would not pay rent of \$1,200.00 for December 2014 because the landlord did not fix the leaking rental unit roof on time. The landlord stated that the roof was leaking in the back near the laundry room and the landlord was advised of the leak on November 18, 2014 and fixed it at the end of November 2014. The

landlord indicated that after her husband unsuccessfully attempted to fix the roof, professionals were retained and able to fix it. The landlord indicated that she unsuccessfully attempted to cash tenant KH's post-dated cheque, dated December 1, 2014, on December 7, 2014. On December 10, 2014, the landlord received confirmation from her bank that the payment had been stopped and she did not receive the \$1,200.00 for December 2014 rent. I asked the landlord to provide me with a copy of the post-dated rent cheque and bank confirmation of this stop payment, via facsimile after the hearing, as she did not include it with her Application evidence. I received and reviewed a copy of both documents, which verifies the above information, prior to writing this decision.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenants.

Analysis

The landlord provided undisputed evidence at this hearing, as tenant KH did not appear. Tenant KH failed to pay the full rent due on December 1, 2014, within five days of being deemed to have received the 10 Day Notice. No partial payments have been made by tenant KH. Tenant KH has not made an application pursuant to section 46(4) of the Act within five days of being deemed to have received the 10 Day Notice.

The landlord testified that she agreed to waive \$600.00 in rent for August 2014, for tenant KH, due to noise complaints. The landlord testified that she applied the security deposit of \$600.00 towards the other half of August 2014 rent. The landlord is only claiming \$600.00 now because she is frustrated with tenant KH. Tenant KH has no notice that this agreement has been withdrawn or voided; the 10 Day Notice does not specifically state that the landlord is seeking \$600.00 for August 2014 rent. Therefore, I find that the landlord is not entitled to \$600.00 for August 2014 rent, as she previously waived this right by entering into an agreement with tenant KH.

The landlord provided undisputed evidence that tenant KH failed to pay \$1,200.00 rent for December 2014. Tenant KH did not appear at this hearing to testify as to whether she had entitlement to deduct any amounts from rent for any emergency repairs. Accordingly, I find that the landlord is entitled to rental arrears outstanding in the amount of \$1,200.00 for December 2014 rent, as against tenant KH only.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application, from tenant KH only.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,250.00 as against **tenant KH only** as follows:

Item	Amount
December 2014 Rent	1,200.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,250.00

The landlord is provided with a monetary order in the amount of \$1,250.00 in the above terms and tenant KH must be served with this Order as soon as possible. Should tenant KH fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an order of possession is withdrawn.

The landlord's application for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is withdrawn.

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: January 27, 2015

Residential Tenancy Branch

