



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on July 20, 2015 seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, hereinafter referred to as Landlord. The application listed two Landlords; therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

No one was in attendance on behalf of either Respondent. The Landlord provided affirmed testimony that each Respondent was served notice of this application and this hearing by registered mail on July 22, 2015. Canada Post tracking numbers were submitted in the Landlord's oral testimony.

Canada Post tracking information confirms that Canada Post delivered both packages to the rental unit on July 23, 2015. Based on the undisputed evidence of the Landlord, I find that each respondent was sufficiently served notice of this hearing in accordance with Section 89(1) (c) of the Act. Accordingly, I continued to hear the undisputed evidence of the Landlord, in absence of the Respondents.

Issue(s) to be Decided

1. Are both named Respondents Tenants to this dispute?
2. Is the Landlord entitled to an Order of Possession?
3. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord testified that that he entered into a written month to month tenancy agreement with three Tenants which began in March 2014. Rent of \$750.00 was payable on the first of each month and in March 2014 the Tenants paid \$375.00 as the security deposit.

The Landlord submitted that one Tenant moved out in March 2015 and another passed away in March 2015. One Tenant, P.B., a named respondent to this dispute, remained in possession of the rental unit.

The Landlord submitted that the remaining Tenant allowed other people to move into the rental unit with him. However, no changes were made to the written tenancy agreement.

The Landlord submitted documentary evidence that when the Tenant failed to pay the July 1, 2015 rent in full a 10 Day Notice as posted to the Tenant's door on July 06, 2015, in the presence of a witness. The Landlord argued that the Tenant and his roommates remain in possession of the rental unit and have not paid the amounts owed for July, August or September 2015. The Landlord now seeks a monetary order of \$1,875.00 (\$375.00 + \$750.00 + \$750.00).

Analysis

The *Residential Tenancy Act* (the *Act*) and the *Residential Tenancy Policy Guidelines* stipulate provisions relating to these matters as follows:

Regarding Respondent Tenants

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Regarding the 10 Day Notice

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement.

Section 46(1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Regarding the Request for an Order of Possession

Section 55(2) of the *Act* provides that A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: (a) a notice to end the tenancy has been given by the tenant; (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term; (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Regarding the request for a Monetary Order

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

In this matter the original written tenancy agreement was never amended to add T.T. as a Tenant. Therefore, I conclude that T.T. was not a tenant; rather, she was an occupant and

therefore has no rights or obligations under the original tenancy agreement, pursuant to Policy Guideline 13.

Based on the above, I conclude that this matter may only proceed against the Tenant, P.B. and the claims against the occupant, T.T. are hereby dismissed, without leave to reapply.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on July 9, 2015 three days after it was posted to the door, and the effective date of the Notice was July 19, 2015.

The Tenant did not pay the rent within the required timeframe and did not dispute the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **July 19, 2015**. Accordingly, I grant the Landlord's request for an Order of Possession effective **2 Days upon service**, pursuant to section 55 of the *Act*.

The Landlord claimed for unpaid rent that was due July 1, 2015 in the amount of \$375.00. Failure to pay rent in accordance with the tenancy agreement was a breach of section 26 of the *Act*. Accordingly, I grant the application for unpaid July 2015 rent in the amount of **\$375.00**, pursuant to section 67 of the *Act*.

As noted above this tenancy ended **July 19, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit from August 1 to September 30, 2015, not rent. I accept the undisputed evidence that no payment has been made for August or September 2015. Accordingly, the Landlord is granted compensation for use and occupancy and any loss of rent from August 1 to September 30, 2015, in the amount of **\$1,500.00** (2 x \$750.00), pursuant to section 67 of the *Act*.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee, pursuant to sections 7 and 67 of the *Act*.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid July 2015 Rent	\$ 375.00
Use & occupancy August 1 – September 30, 2015	1,500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,925.00
LESS: Security Deposit \$375.00 + Interest 0.00	<u>-375.00</u>
Offset amount due to the Landlord	<u>\$1,550.00</u>

Conclusion

The Landlord succeeded with their application against the Tenant P.B. and was granted an Order of Possession and a Monetary Order in the amount of \$1,925.00. The Monetary Order was offset against the security deposit of \$375.00 leaving a balance due to the Landlord of \$1,550.00.

The Landlord has been issued an Order of Possession effective **Two (2) Days, after service upon the Tenant.** In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order in the amount of **\$1,550.00.** This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

The application against the occupant, T.T. was 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: September 28, 2015

Residential Tenancy Branch

