



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR MNSD MNDC FF, Landlord
CNR MNR PSF FF, Tenants

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on July 24, 2015, seeking an Order of Possession for unpaid rent and utilities, and a Monetary Order for: damage to the unit site or property; unpaid rent and utilities; to keep the security 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 Tenants filed on July 08, 2015, seeking an Order to cancel the 10 Day Notice to end tenancy; a monetary order for cost of emergency repairs; An Order for the Landlord to provide services or facilities required by law, and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of either Tenant. The Landlord provided affirmed testimony that the Tenants were each personally served notice of his application, his evidence, and notice of this hearing on July 24, 2015, in the presence of a witness. Based on the submissions of the Landlord I find that each Tenant was sufficiently served Notice of the Landlord's application, evidence, and this hearing.

The Landlord confirmed receipt of the Tenants' application and notice of hearing documents. However, no one appeared at the teleconference hearing on behalf of the Tenants; despite the Tenants being served with notice of the Landlord's application in accordance with the Act; and despite the Tenants having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed with or without leave to reapply?
2. Has the Landlord proven entitlement to an Order of Possession?
3. Has the Landlord proven entitlement to a Monetary Order against T.H.?

Background and Evidence

The Landlord testified that the Tenants entered into a written one year fixed term tenancy agreement which began on January 1, 2015. Rent of \$1,500.00 was payable on the first of each month and on or around January 1, 2015 the Tenants paid \$750.00 as the security deposit.

The Landlord submitted evidence that when the Tenants failed to pay their full July 1, 2015 rent he personally served them with a 10 Day Notice on July 4, 2015, in the presence of a neighbor. The Notice indicated that the Tenants owed rent of \$720.00 was due on July 1, 2015, and \$566.00 for unpaid utilities which were due on July 04, 2015. The Notice listed an effective date of July 14, 2015.

The Landlord asserted that in addition to the above mentioned amounts due, the Tenants did not make payments for August or September 2015 rent increasing the outstanding amount now due to \$3,720.00 for unpaid rent (\$720.00 + \$1500.00 + \$1500.00) plus the \$566.00 for utilities. The Landlord requested that an Order of Possession be issued and a Monetary Order.

No evidence was heard in support of the Tenants' application as no one appeared during the 13 minute teleconference hearing.

Analysis

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

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.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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 Tenants were personally served the 10 Day Notice on July 4, 2015 and the effective date of the Notice was **July 14, 2015**.

The Tenants did not pay the rent or utilities and filed to dispute the Notice on July 08, 2015, within the stipulated time frames.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for thirteen minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenants, I order the Tenants' application dismissed, without liberty to reapply.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

In this case, the Landlord appeared at the hearing and requested that an Order of Possession be issued. Accordingly, I award the Landlord an Order of Possession.

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.

The Landlord claimed unpaid rent of \$720.00 and unpaid utilities of \$566.00 as per the amounts listed on the 10 Day Notice. In absence of evidence to the contrary I accept the Landlord's submissions that these amounts remain unpaid by the Tenants. Based on the aforementioned, I award the Landlord unpaid rent for July 1, 2015, of \$720.00 plus the unpaid utilities of \$566.00 for the total amount of **\$1,286.00**, pursuant to section 67 of the *Act*.

As noted above this tenancy ended **July 14, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for August and September 2015. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to ready the unit and find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire period between August 1, 2015 and September 30, 2015, in the amount of **\$3,000.00**. If the Landlord suffers additional loss they are at liberty to file another application for that loss.

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.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) 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 Rent and Utilities	\$1,286.00
Use & Occupancy & Loss of Rent	3,000.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,336.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$3,586.00</u>

No evidence was submitted or heard regarding the Landlord's claim for damages to the rental unit. Accordingly, that claim is dismissed with leave to reapply.

Conclusion

The Tenants did not appear at the scheduled teleconference and their application was dismissed without leave to reapply.

The Landlord was primarily successful in proving the merits of his application and was granted an Order of Possession and a monetary award. The Landlord was granted a monetary award in the amount of \$4,336.00 which was offset against the Tenants' security deposit of \$750.00 leaving a balance due to the Landlord of \$3,586.00.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do 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 **\$3,586.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Small Claims Court and enforced as an Order of that Court.

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 10, 2015

Residential Tenancy Branch

