



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant DE (the "tenant"), "tenant RM" and the landlord's agent GM (the "landlord") attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord named in this application, and had authority to speak on his behalf.

The tenants confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include June 2016 unpaid rent of \$1,600.00. I find that the tenants should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords application to include a monetary claim for June 2016 unpaid rent of \$1,600.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

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

Background and Evidence

The landlord could not recall when the tenancy started but estimated it was over a year ago. The tenant testified that this tenancy began on December 1, 2014, on a fixed term until December 2015 at which time it became a month-to-month. Rent in the amount of \$1,600.00 is payable on the first of each month. The tenants remitted \$800.00 for the security deposit and \$800.00 for the pet deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

As a result of ongoing late rent payments, on March 3 the landlord and tenants agreed in writing to end the tenancy effective April 30. The tenant testified that according to the signed letter the tenancy was to end April 30, 2017 whereas the landlord testified that the year 2017 was a clerical error and the letter should have read April 30, 2016. The landlord testified that the letter was also incorrectly dated as March 3, 2017, a date that has not yet occurred. Neither party submitted a copy of the letter.

The tenants confirmed personal receipt of the landlord's 10 Day Notice, dated April 28, 2016, on the same date, at the rental unit. The 10 Day Notice for unpaid rent of \$4,350.00 due on April 1, 2016 has an effective move-out-date of May 9, 2016.

The landlord seeks a monetary order of \$7,550.00 for unpaid rent from January 2016 to June 2016. The landlord claimed that the tenants paid a total of \$2,050.00 in rent for the above six months.

The tenant disputed the amount that remains unpaid for the last six months. It is her position that the majority of rent was paid and the only rent that remains outstanding is \$200.00 from March, \$1,600.00 from May and \$1,600.00 from June.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenant agree in writing to end the tenancy. I prefer the testimony of the landlord in regards to the signed letter and clerical error. I find it more probable that the landlord made a clerical error and that the intent of the parties was to end the tenancy in 2016, not in 2017. I find the tenancy should have ended April 30, 2016 but because of the clerical error the tenants did not vacate the rental unit and the landlord issued a 10 Day Notice.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants acknowledged that some rent remained outstanding for March 2016 and that they did not pay that overdue rent or file an application to dispute the notice, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Although the tenant contended that most rent was paid, the tenant provided no corroborating dates or documents to show that rent was indeed paid. I find that the landlord proved that the current rent for this unit is \$1,600.00. I find the landlord provided evidence that the tenants failed to pay full rent from January 2016 to June 2016. Therefore, I find that the landlord is entitled to \$7,550.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit and pet deposit in the total amount of \$1,600.00 in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$6,050.00 against the tenants.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

I issue a monetary order in the landlord's favour in the amount of \$6,050.00 against the tenants.

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: June 14, 2016

Residential Tenancy Branch