



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNDC, FF
 CNC, CNR

Introduction

This hearing was convened by way of conference call concerning amended applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and 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; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for an order cancelling a notice to end the tenancy for cause and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The hearing was adjourned on the first date scheduled at the request of the tenant due to evidentiary issues and a medical emergency. The parties both parties provided email addresses, and the tenant advised that the only effective method of providing a new notice of hearing from the Residential Tenancy Branch was by email, and both parties were provided with the notice of hearing by email. However due to technical difficulties the hearing did not commence on the second date scheduled. The parties received another notice of hearing by email scheduling the hearing at 9:30 a.m. this date, and the landlord attended the call. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant attended the call. The landlord gave affirmed testimony, and all evidence provided has been reviewed and is considered in this Decision.

Since the tenant has not attended the hearing, the tenant's application is hereby dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- 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 specifically for loss of rental revenue?

Background and Evidence

The landlord testified that this month-to-month tenancy began in mid-July, 2016 and the tenant still resides in the rental unit. A written tenancy agreement was not signed by the parties.

Rent in the amount of \$590.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which was applied to rent for September, 2016 with the consent of both parties. No pet damage deposit was collected and the tenant agreed to repay the security deposit during the tenancy but never did, and no deposits are currently held in trust by the landlord.

The rental unit is a room in a complex containing 6 single room units, and the landlord does not reside there..

The landlord further testified that the tenant is currently in arrears of rent the sum of \$290.00 for October, 2016 and has not paid any rent for November, 2016, leaving a balance of unpaid rent totalling \$880.00. The landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 3, 2016, a copy of which has been provided. It is dated "03 09 2016" and contains an effective date of vacancy of "15 10 2016," for unpaid rent in the amount of \$590.00 that was due on "01 October 2016." The landlord testified that an error exists in the date of issuance, and should read "03 10 2016," and was actually served October 3, 2016. No rent has been paid since the issuance of the notice.

The landlord also testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on September 20, 2016 personally. A copy has been provided and it is dated "19 Sept 2016," 2016 and contains an effective date of vacancy of "19 Oct 2016." The reasons for issuing it are:

- Tenant has engaged in illegal activity that has, or is likely to:
 - Jeopardize a lawful right or interest of another occupant or the landlord;

- *Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord seeks an Order of Possession and a monetary order for the unpaid rent as well as loss of rental revenue for December, 2016 and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the 1 Month Notice to End Tenancy for Cause, and I find that they are both in the approved form. Having dismissed the tenant's application, I grant an Order of Possession in favour of the landlord.

The effective date of vacancy of the 1 Month Notice to End Tenancy for Cause is changed, pursuant to the *Act*, to the nearest date that complies with the *Act*, which I find is October 31, 2016. I also find that the effective date of vacancy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is October 13, 2016, given that the landlord testified it was served personally on October 3, 2016. Since the effective date of vacancy has passed on both notices, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the testimony of the landlord that the tenant has not paid rent in full for October or November, 2016 and the landlord has established a claim in the amount of \$880.00.

With respect to loss of rental revenue, the effective date of vacancy of the Order of Possession, depending on when served by the landlord, will not be effective before the date rent is payable for December, 2016. Any notice to end the tenancy if given by the tenant would not be effective before December 31, 2016, however the landlord has the obligation of re-renting as soon as possible. I am satisfied that as a result of the tenant's failure to pay the rent or move out of the rental unit by the effective date of vacancy contained in the notices, the landlord will lose rental revenue and I grant a monetary order for half of December's rent, or \$295.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in the amount of \$1,275.00 (\$290.00 + \$590.00 + \$295.00 + \$100.00 = \$1,275.00).

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I hereby 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 \$1,275.00.

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: November 29, 2016

Residential Tenancy Branch