



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, MND, MNR, MNSD, FF

Introduction

On October 12, 2016, the Landlords submitted an Application for Dispute Resolution for an order of possession; a monetary order for unpaid rent; to keep the security deposit or pet deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

On November 17, 2016, the Landlords submitted an Amendment to the Application to include a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities date August 21, 2016.

The Landlords and Tenants attended the hearing. The tenants were assisted by their agent C.V. The Landlords and Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure gives an arbitrator discretion to dismiss unrelated claims with or without leave to reapply. Since the most important issue to determine is whether or not the tenancy is ending, the Landlords claim for a monetary order for damage is dismissed with leave to reapply.

The Landlords provided a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 21, 2016. The 10 Day Notice is not signed by the Landlords.

The Tenant's advocate C.V. testified that the 10 Day Notice the Tenants received from the Landlords is not signed by the Landlords.

Section 52 of the Act requires that a notice to end tenancy must be signed by the Landlord in order to be effective. I find that the 10 Day Notice is not signed and is not an effective notice. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 21, 2016, is set aside.

Issues to be Decided

- Are the Landlords entitled to an order of possession based on the Tenant's notice to end the tenancy?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to keep the Security Deposit towards unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords and Tenants testified that the tenancy began in 1988 and is a month to month tenancy. Rent in the amount of \$484.00 is payable to the Landlord on the first of each month. The Tenants paid the Landlords a \$350.00 security deposit.

The Landlords testified that the Tenants gave the Landlord a notice to end tenancy dated July 31, 2016, that states the Tenants are moving out of the rental unit by August 31, 2016. The Landlords testified that the Tenants failed to move out on the effective day of the Notice and the Tenants have failed to pay the rent.

The Landlords provided a copy of the Tenant's notice to end tenancy.

The Landlords testified that the Tenants did not pay the rent for the following months:

July 2016	\$484.00
August 2016	\$484.00
September 2016	\$484.00
October 2016	\$484.00
November 2016	\$484.00
December 2016	\$484.00
total	\$2,904.00

The Landlords are seeking to keep the security deposit of \$350.00 in partial satisfaction of the claim for unpaid rent.

In response, the Tenant J.P. testified that he did give the Landlords a notice to end tenancy dated July 31, 2016.

The Tenant J.P. testified that the Tenants have not paid rent for the dates the Landlord provided above, and he acknowledged that the Tenants owe the Landlords the rent money.

Analysis

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

Residential Tenancy Branch Policy Guideline # 11 Amendment and Withdrawal of Notices, provides guidance with respect to a notice to end tenancy. The Guideline states:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find the Tenants gave the Landlords an effective notice to end the tenancy and have failed to abide by the Notice. I find that the Tenant's notice meets the requirements pursuant to section 52 of the Act.

Since the tenancy is over, I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Landlords testified that they are in agreement to give the Tenant more time to move out of the unit. The Landlords requested an order of possession effective at 1:00 pm on December 31, 2016.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants did not move out in compliance with the valid notice to end tenancy, I order the Tenants to pay the Landlords the amount of \$100.00 for the cost of the Application.

I find that the Landlords are entitled to a monetary order in the amount of \$2,904.00 for unpaid rent. I order that the Landlords can keep the security deposit of \$350.00 in partial satisfaction of the claim.

I grant the Landlords a monetary order in the amount of \$2,654.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlords are granted an order of possession effective at 1:00 pm on December 31, 2016.

I order that the Landlords can keep the security deposit in the amount of \$350.00 in partial satisfaction of the claim for unpaid rent.

The Landlords are granted a monetary order in the amount of \$2,654.00 for unpaid rent and the cost of the Hearing.

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: December 02, 2016

Residential Tenancy Branch

