



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent.

The landlords and their daughter, who was translating for the landlords, appeared for the hearing. One of the three named co-tenants, referred to by initials SF, appeared.

At the outset of the hearing, I affirmed the parties and explained the hearing process to the parties. I also gave the parties the opportunity to ask questions about the process.

At the outset of the hearing, I explored service of hearing materials upon each other.

The landlord testified that she served the proceeding package and evidence to the tenant identified by initials DK, in person, on February 20, 2021. The landlord testified that the Amendment was served upon the tenant identified by initials SF in person on April 23, 2021.

SF testified that the landlord served both her and DK with the proceeding package in person but that it was served in April 2021. SF testified that the landlord's evidence was served on May 2, 2021. The tenant denied receiving the landlord's Amendment.

SF confirmed she understood the purpose of the proceeding and she was prepared to respond to the landlord's claims. SF stated she intended to provide the tenant's position orally during the hearing.

Although there was a discrepancy in the dates of service, since I was provided testimony of both parties that DK was served with the proceeding package and SF acknowledged receipt of the hearing documents and was prepared to respond to them, I

deemed DK and SF sufficiently served pursuant to the authority afforded me under section 71 of the Act.

I did not hear any evidence that the other co-tenant, referred to by initials NJ, was served with notification of the landlord's claims against him and I excluded him as a named party.

As for the landlord's Amendment, I was not satisfied that it had been duly served; however, Rule 4.6 of the Rules of Procedure provides as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord had requested the monetary claim be amended to include unpaid and/or loss of rent up to and including the month of May 2021 since the tenants continue to occupy the rental unit. The tenant confirmed that she continues to occupy the rental unit and I permitted the landlord's monetary claim to be amended during the hearing as I was satisfied the amendment would be reasonably foreseeable by the tenants.

After both parties had an opportunity to be heard, I was able to facilitate an agreement between the parties with respect to the end of the tenancy. I have recorded that agreement by way of this decision and the Order of Possession that accompanies it.

Issue(s) to be Decided

1. What is the agreement with respect to the end of tenancy?
2. Have the landlords established an entitlement to recovery of unpaid and/or loss of rent, and if so, the amount?
3. Award of the filing fee.

Background and Evidence

During the hearing, the parties reached an agreement that the tenants shall be permitted occupancy of the rental unit until May 31, 2021 and the tenant had no

objection to the landlord receiving an Order of Possession with an effective date of May 31, 2021.

As for the landlord's monetary claim for unpaid and/or loss of rent, I was provided the following testimony by the parties.

Both parties provided consistent testimony that the landlord permitted, and the tenants took, possession of the rental unit without signing a written tenancy agreement. The parties provided consistent testimony that the landlord collected a security deposit of \$700.00 and the monthly rent was set at \$1400.00.

The parties were in dispute as to when the tenancy started and the day rent was due. The landlord testified that the tenants moved in on November 17, 2020 and the monthly rent was payable on the 18th day of every month. The landlord testified that she told DK that rent would be payable on the 18th of every month and DK agreed but SF did not agree, citing the timing of her disability allowance payments. The tenant SF testified that they moved in on November 19, 2020 and she expected that the monthly rent of \$1400.00 would be payable on the first day of every month because she receives disability allowance in the last week of the month. The tenant testified that the tenancy was supposed to start on December 1, 2020 but she asked the landlord for early possession, as she has obtained permission to move in early at no cost from landlords in the past, and there was no requirement or discussion with the landlord that the tenants would have to pay pro-rated rent for the latter part of November 2020. Both parties agreed that in their discussions with each other in November 2020, they could not agree on the due date for rent payment.

It was undisputed that the landlord collected the security deposit and rent of \$1400.00, totalling \$2100.00 by way of installments of \$300.00 on November 16, 2020; \$1000.00 on November 18, 2020 and \$800.00 on November 20, 2020. It was also undisputed that the tenants paid rent of \$1200.00 on December 26, 2020 and no further rent payments were made or collected after that date.

The landlord seeks to recover the rent shortfall of \$200.00 that was not paid in December 2020 plus \$1400.00 for every month thereafter. The tenant acknowledged that the rent for January 1, 2021, which was mostly paid on December 26, 2020 when her disability allowance was received, was short \$200.00 and no rent was paid for the months thereafter.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

During the hearing, the parties agreed that the tenants shall have occupancy of the rental unit until May 31, 2021 at which time they are required to return vacant possession of the rental unit to the landlords. In keeping with their agreement, I provide the landlords with an Order of Possession effective at 1:00 p.m. on May 31, 2021 to ensure possession is returned.

As for the landlord's monetary claim, the landlords bear the burden of proof, based on the balance of probabilities.

Clearly the parties did not have a meeting of the minds with respect to when the monthly rent was due. One of the many purposes of preparing a written tenancy agreement is to document the agreement between the parties, including the date rent is payable, and an agreement should be reached before possession of the rental unit is given/taken. Unfortunately, the landlords gave the tenants possession of the rental unit and the tenants took possession of the rental unit before coming to an agreement with respect to the date rent was payable and now they are in dispute as to the due date for rent.

The tenant claims she would not have agreed to rent being payable on the 18th of the month as she does not receive her monthly disability cheque until the last week of the month. The landlord stated she "told" tenant DK that rent was payable on the 18th of the month but SF had objected. The due date for the rent is not a unilateral decision of the landlord. Rather, as stated above, the due date for rent, as with the other terms of tenancy are to be agreed upon. In recognition that there was no agreement with respect to the rent due date but that the tenant acknowledged rent should be payable every month on the first of the month, I hold the tenants responsible to pay the monthly rent on the first day of the month for that month.

The tenant testified that there was no discussion or requirement that the landlord would require the tenant's to pay pro-rated rent for the latter part of November 2020 when they were given early possession of the rental unit and it is not uncommon for landlords to

provide early possession without charging rent. The landlord did not offer a compelling rebuttal to that position.

In light of the above, I find the tenants paid the rent for December 2020 by way of the installment payments made on November 16, 18 and 20, 2020. I further find that the majority of the January 2021 rent was paid by way of the \$1200.00 payment on December 26, 2020 payment, leaving a shortfall of \$200.00 for January 2021. I also find the landlords suffered loss of \$1400.00 for every month from February 2021 through May 2021. Therefore, I provide the landlords with an award for unpaid and/or loss of rent of \$5800.00 [$\$200.00 + (\$1400.00 \times 4 \text{ months})$].

I further award the landlords recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

In keeping with all of the above, the landlords are provided a Monetary Order in the sum of \$5900.00 to serve and enforce upon the tenants.

The landlords did not request authorization to retain the security deposit and it remains in trust at this time, to be administered in accordance with section 38 of the Act.

Conclusion

The landlords are provided an Order of Possession effective at 1:00 p.m. on May 31, 2021.

The landlords are provided a Monetary Order in the sum of \$5900.00 to serve and enforce upon the tenants.

The security deposit and it remains in trust, to be administered in accordance with section 38 of the Act.

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: May 11, 2021

Residential Tenancy Branch