



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OPR, MNR, ERP, RP, PSF, RPP, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for the recovery of rent for the months of December 2008 and January and February 2009, pursuant to Section 67.

The tenant applied for the following:

- An order to cancel the notice to end tenancy, pursuant to Section 46;
- An monetary order for the cost of emergency repairs pursuant to Section 67;
- An order to seek the landlord's action to make repairs, pursuant to Section 32;
- An order to seek landlord's action in providing facilities required by law, pursuant to Section 65;
- An order to return the tenant's property, pursuant to Section 67 and for the return of the filing fee pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

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

Is the tenant entitled to a monetary order for the cost of repairs and compensation under the Act? Does the landlord have in his possession, the personal property of the tenant?

Background and Evidence

Both parties agreed that the tenancy started on August 01, 2008 without a written tenancy agreement. Rent was set at \$850.00.

The landlord stated that the tenant failed to pay rent for December 2008, and the landlord served the tenant with a notice to end tenancy on December 30, 2008. The landlord stated that the rental unit was rented by the tenant and the tenant's spouse and the names that the tenants provided the landlord with were the same names that the landlord used on the notice to end tenancy. However, the landlord stated that in mid January, the landlord found out from the police, that the tenants had different names from what they had provided him with. The landlord also stated that the Hydro company called to ask if there was a person living in the suite by the name that the landlord was not familiar with and the landlord reported that the name of the tenant in the suite was not the name that Hydro had on their records. The landlord has applied for an order of possession and a monetary order for rent for three months.

The tenant stated that the tenant received the notice to end tenancy, but did not take any action as it was not in the tenant's name. However, the tenant disputed the notice in the tenant's application to cancel the notice, made on February 06, 2009. The tenant stated that rent was paid on December 02, 2008 for December and on or about January 08, 2009, the tenant paid rent for both January and February 2009 in the amount of \$1700.00 in cash and did not get a receipt. The tenant stated that the tenant received a loan from a friend and paid rent in advance, so that the tenant would not be worried about paying rent in February. The tenant stated that the landlord requested Hydro to cut off supply to the rental unit and the tenant has not lived in the unit since February 03, 2009. The tenant admitted that the Hydro account was not set up in the tenant's name but was set up in the name of the tenant's friend. The tenant stated that the landlord's son broke into the rental unit and stole some of the tenant's possessions and the tenant has applied for an order against the landlord for the return of these items. The tenant has not provided any documentary evidence to support her claim of a monetary order against the landlord for repairs, emergency repairs, lack of facilities and theft of possessions. The tenant is also applying for the recovery of the filing fee.

Analysis

Landlord's Application: Based on the sworn testimony of both parties, I find that the notice to end tenancy dated December 30, 2008 for non payment of rent, was received

by the tenant. The tenant applied for dispute resolution on February 06, 2009 and did not apply for more time to dispute the notice. The tenant did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application pursuant to Section 46 to set aside the Notice to End Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing an order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the landlord is entitled to a total of \$2550.00 which is the amount of rent for the months of December, January and February 2009. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Tenant's application: The tenant did not have any evidence to support the tenant's claim of having paid rent for the last three months. By the tenant's own admission, the tenant has the hydro account set up in a different name and hence has not proven her allegation of the landlord cutting off power to the suite. I find that the landlord used the name of the tenant as provided by the tenant on the Notice to end tenancy and on the application for dispute resolution. The tenant has not provided any documentary evidence to support her claim and hence the tenant's application is dismissed.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$2550.00**. The tenant's application is dismissed. Dated February 23, 2009.

Dispute Resolution Officer