

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: OPR, OPB, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed by the tenant, pursuant to Section 67;
- An order to recover the cost of filing this application, pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

- Is the landlord entitled to an order of possession for unpaid rent and for breaching the tenancy agreement?
- Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy started on April 01, 2009. The monthly rent is \$700.00 due in advance on the first day of the month. The landlord stated that the tenant moved in prior to April 01, 2009 and did not pay rent for April.

On April 08, 2009, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent for April. On May 04, 2009, the tenant paid the security deposit of \$350.00 and rent for May 2009.

The tenant testified that the landlord agreed to waive rent for April in exchange for cleaning the rental unit and therefore she did not pay rent for April. The landlord denied having waived rent for April.

The landlord is applying for an order of possession and a monetary order in the amount of \$750.00 which includes the filing fee of \$50.00.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant has not filed any evidence to support her claim of an agreement made by the parties for the landlord to waive rent for April in exchange for cleaning the rental unit prior to moving in.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenant did not pay rent for April 2009 and was served a ten day notice to end the tenancy.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy on April 08, 2008 and did not pay overdue rent or dispute the notice within five days of receiving the notice.

Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective May 30, 2009. This Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$700.00 for unpaid rent and \$50.00 for the filing fee and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$750.00. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the landlord an order of possession effective on or before **1 p.m. on May 30, 2009** and a monetary order in the amount of **\$750.00**.

Dated May 26, 2009.

Dispute Resolution Officer