



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNR, FF

For the landlords – OPR, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent, an Order to keep the security deposit and recover the filing fee. The tenant seeks to cancel the 10 Day Notice to End Tenancy and to recover the filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing Fee?
- Should the notice for unpaid rent be cancelled?
- Is the tenant entitled to recover the filing fee?

Background and Evidence

This tenancy started on June 01, 2009. No written tenancy agreement is in place and the tenant believes the rent was agreed to be \$1050.00. The landlords dispute this amount and



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state the rent is \$1,250.00. The tenant paid a security deposit of \$525.00 which she believes to be half the first months rent. This was paid on May 26, 2009 and was accepted by the landlords.

The tenant testifies that the rental property was advertised at \$1,250.00. She went to view this with the landlord and discussed that she would like to rent the property but could not afford \$1250.00. The landlord had two other prospective tenants to view the property and phoned the tenant on May 26 to ask her how much she could afford to pay. The tenant states that they agreed a figure of \$1,050.00 per month. The tenant paid a security deposit of half the months rent and gave the landlord six post-dated cheques for the rent from June 01 to Nov 01, 2009. The tenant testifies that she asked the landlord to present the June cheque on the 4th of the month as this was the day she got paid and the funds would be available.

The landlord went on holiday and did not present the cheque until June 08. At this time the cheque was returned for insufficient funds. When the landlord called the tenant about this she told him she would pay him the following week. The tenant testifies that at this time the landlord agreed to this arrangement. However, some time later the landlords' wife called around to collect the outstanding rent from the tenant and was confrontational with the tenants' daughter demanding the outstanding rent. The tenants witness confirms this account and adds that the tenant tried to contact the landlord and each time the landlords' wife hung up the phone.

The landlord's testify that the tenant underpaid her rent as the agreement was for \$1,250.00. They did not notice the cheques had been made out for \$1,050.00 as they put them away until after their holiday. The landlords served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on June 22, 2009. The tenant had five days to either pay the rent or dispute the Notice. The tenant disputed the Notice on June 24, 2009.

Analysis

I find the tenants' application to cancel the Notice to End Tenancy has no merit. The rent for June remains unpaid despite having been served a 10 Day Notice for unpaid rent by the landlord on June 22, 2009. Therefore I dismiss the tenants' application without leave to reapply.

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I find that the landlord is entitled to recover rent arrears for June, July and August, 2009. The landlords choose not to deposit the tenants rent cheques for July and August because they felt the amount was wrong. However, I prefer the evidence of the tenant as to the amount of rent agreed on of \$1,050.00. The tenants' testimony states that she would not have taken the rental property if the rent was \$1,250.00 and she had agreed this reduced amount with the landlord. Therefore, an agreement has been reached that the landlords will return all of the remaining five cheques to the tenant and the tenant will pay rent for June and July with a Money Order on August 13, 2009 and the rent for August will be paid on August 27, 2009. **I order** the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit in partial payment of the rent arrears.

The tenant did not pay rent for June 2009 and since that time has not refunded the landlord the outstanding amount due from the cheque that bounced. Therefore, I uphold the landlords 10 Day Notice. The landlord has requested an Order of Possession pursuant to section 55(3) of the Act and the tenant and landlord have agreed that the tenant will move from the rental property on August 31.

The landlord has claimed an amount of \$7.00 for the returned cheque. However, there is no tenancy agreement between the parties stating that a landlord will charge this amount for un-cleared cheques. The landlord also claims the tenant owes \$100.00 towards their security deposit. However, I find the tenant has paid the security deposit agreed on at the outset of the tenancy. Therefore, these sections of the landlords claim are dismissed.

As the landlord has been largely successful in this matter, they are entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent for June, July and August 2009	\$3,150.00
Less security deposit	(-\$525.00)



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Total amount due to the landlord	\$2,675.00
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Conclusion

The Tenant's application is dismissed without leave to reapply. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord to take effect on **August 31, 2009**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,675.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

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: August 06, 2009.

Dispute Resolution Officer