



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNR, OPR, MNR, MNSD, FF, O

Introduction

This hearing dealt with cross applications. The tenant filed to dispute a rent increase, dispute a *10 Day Notice to End Tenancy for Unpaid Rent* and recover the filing fee paid for this application. The landlords filed for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. The landlord confirmed receiving the tenant's application and provided evidence of serving the tenant with the landlord's application by registered mail. Both landlords and an agent for the tenant were present at the hearing and all parties were provided the opportunity to be heard and to respond to the other party's submissions.

At the beginning of the hearing, I asked if the tenant was present and the agent responded as though he was the tenant. After the landlord questioned the identity of the other participant, the tenant's agent identified himself as another tenant. Upon further enquiry, the agent acknowledged he was not a tenant of the landlords but that he occupied the rental unit and was appearing on behalf of the tenant. The agent had to be asked more than once to provide his full name to which he finally complied.

Issues(s) to be Decided

1. What is the amount of rent payable under the terms of the tenancy agreement?
2. Are there grounds to cancel the *10 Day Notice to End Tenancy for Unpaid Rent*?
3. Are the landlords entitled to an Order of Possession for unpaid rent?
4. Are the landlords entitled to a Monetary Order for unpaid rent?
5. Retention of the security deposit.
6. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from the parties, I make the following findings. When the landlords acquired the residential property in July 2009 the upper level of the house was occupied by the tenant. There was no written tenancy agreement between the tenant and the former landlord. The landlords and the tenant met at the end of July 2009 to discuss the tenancy. The tenant paid \$1,000.00 to the landlord for the month of August

2009. The tenant gave the landlord post-dated cheques in the amount of \$1,300.00 for the months of September and October 2009. The September cheque was returned by the bank and the landlords issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) and served it upon the tenant by posting it on the door on September 8, 2009. The Notice has an effective date of September 18, 2009 and indicates that \$1,300.00 in rent was outstanding as of September 1, 2009.

The landlords testified that they were informed that the rental unit was rented for \$1,300.00 when they agreed to purchase the property and the former landlord had advised that a \$600.00 security deposit had been paid by the tenant. The landlords testified that during the meeting with the tenant at the end of July 2009 the tenant confirmed his rent was \$1,300.00 per month and that he had occupied the rental unit for the past two years. According to the landlords, the tenant advised them at that meeting that he was having difficulty coming up with rent for August 2009 since he had lost his roommate but that he was actively seeking a new roommate. The landlords agreed to accept a lesser amount of \$1,000.00 in recognition of the tenant's difficulty coming up with rent for August 2009 without a roommate but that rent would return to \$1,300.00 for subsequent months.

The landlord testified that the cheque received from the tenant for September's rent was returned for insufficient funds and the landlords provided a copy of the Returned Item Notice received from their bank. The landlords provided copies of the two post dated cheques received from the tenant for September and October 2009. Both cheques are made out to the male landlord and are in the amount of \$1,300.00 each.

The tenant's agent testified that he has been the tenant's roommate for the past six months, the tenant has occupied the rental unit for the past four years, and rent has always been \$1,000.00 per month. The agent acknowledged that he was not present during the meeting with the landlords at the end of July 2009. The agent alleged that the tenant only provided the landlord with post dated cheques for \$1,300.00 because the male landlord threatened the tenant with physical violence. The landlord vehemently denied threatening the tenant and described the occasion where he collected the rent cheques from the tenant as being very respectful and friendly.

The tenant's agent also claimed the rent cheques were "stopped" upon the tenant learning the landlord was not entitled to charge rent of \$1,300.00 and that the cheque was not returned for insufficient funds. Upon enquiry, the tenant's agent alleged that the tenant offered to pay the landlord \$1,000.00 in September 2009 over the telephone but that the landlord refused any amount less than \$1,300.00. The landlord denied any

such offer from the tenant. The agent acknowledged he was not present during any such phone call.

When asked for evidence to corroborate the agent's testimony concerning rent and actions of the landlord, the agent referred to the tenant's payment history; however, no documentation was provided and no witnesses were present. The agent requested I call the tenant at a phone number the agent provided. I called the telephone number and received voice mail. The agent stated he did not know the phone number of the former landlord.

Analysis

The Act requires a tenant to pay rent when due in accordance with the terms of the tenancy agreement. The Act recognizes a tenancy agreement established by verbal agreement and its terms are enforceable. In this case the term respecting the amount of rent was in dispute. The landlords alleging rent is \$1,300.00 per month and the tenant's agent alleging rent is \$1,000.00 per month.

I have considered all of the evidence before me, including verbal testimony of the parties and documentation provided as evidence. I found the landlords to be very credible as I found their testimony to be forthcoming and consistent and their statements were supported by the documentation provided as evidence. I found the tenant's agent to be less than credible given his attempted impersonation of the tenant at the commencement of the hearing, his reluctance to provide his identity, and I also found his assertions inaccurate as evidenced his submission that the September rent cheque was "stopped" when in fact the evidence shows it was returned for insufficient funds. In addition, the tenant did not provide corroborating evidence such as a payment history or witnesses to support his position that rent was an amount other than that on the returned cheques. Finally, the tenant's agent was not present during conversations between the tenant and the landlords and I do not accept the second-hand evidence he presented. Therefore, I have given considerably more weight to the landlord's submissions than the submissions of the tenant's agent.

In light of the above findings, I am satisfied the landlords have proven, based on the balance of probabilities, that the monthly rent was \$1,300.00 per month in accordance with the terms of the verbal tenancy agreement. It is not in dispute that the tenant failed to pay any rent for September 2009 and I find there is insufficient basis to cancel the Notice to End Tenancy. Therefore, I dismiss the tenant's application without leave to reapply.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Having found the Notice to End Tenancy is valid and the tenant did not pay the outstanding rent within five days and the tenant's dispute was unsuccessful, I find the tenancy is ended and the landlords are entitled to an Order of Possession effective two (2) days after service upon the tenant.

I grant the landlord's request for compensation for unpaid rent for September 2009 in the amount of \$1,300.00 and I authorize the landlords to retain the tenant's \$600.00 security deposit and accrued interest in partial satisfaction of the rent outstanding. I estimate the interest on the security deposit based on two years of tenancy to be \$13.61. I further award the landlords recovery of the filing fee paid for this application. The landlords are at liberty to make a subsequent application to recover loss of rent for October 2009.

The Monetary Order that accompanies this decision is calculated as follows:

Unpaid rent – September 2009	\$ 1,300.00
Filing fee	50.00
Less: security deposit and interest	<u>(613.61)</u>
Monetary Order for landlords	<u>\$ 736.39</u>

The landlords must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords have been provided an **Order of Possession effective two days after service upon the tenant.**

The landlords are authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed the landlords and the landlords are provided a Monetary Order for the balance of \$736.39 to serve upon the tenant.

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: October 08, 2009.

Dispute Resolution Officer