

Decision

Dispute Codes: OPR, MNR, MND, FF

Introduction

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

1. An Order of Possession pursuant to section 55.
2. A monetary order for rental arrears and damage to the rental premises pursuant to section 67.
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The tenants and the landlord were given full opportunity to be heard, to present evidence and to make submissions. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession.

Whether the landlord is entitled to a monetary order for unpaid rent, damage to the rental premises and recovery of the filing fee for this application.

Summary of Evidence and Findings – Order of Possession

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the notice) was personally served to the male tenant on March 20, 2010. He submitted signed copies of both documents as evidence. He stated that both of the landlord's representatives who were involved in the service of these documents to the tenants were unavailable to provide testimony.

The male tenant said that he received the hearing package from the landlord on April 19, 2010. I accept that the hearing package was served to the tenants.

The male tenant denied that the tenants were personally served with the notice by the landlord. The male tenant testified that a representative of the landlord who was not in attendance at this hearing met with him on March 20, 2010. He provided sworn evidence that the landlord's representative did speak to him about the notice. He said that the landlord's representative had the notice with him when they discussed possible arrangements whereby the tenants could continue performing maintenance work on the building as a way of repaying the outstanding rental arrears. The male tenant testified that the landlord's representative said that he would "look after" the notice that he was supposed to have given to the tenants that day and did not give the notice to the tenant. The male tenant said that the landlord's representative told him that he would speak with the building manager for the landlord to determine if the arrangement proposed by the tenants would be acceptable. The male tenant testified that the landlord's representative told him to not worry about the notice as the landlord's representative would resolve this issue with the landlord.

The female tenant testified that she saw the landlord's representative leave the meeting with the male tenant with the notice in his hand. She said that the landlord's representative left the meeting with the tenants assuring both of them that they need not worry about the notice as he would "look after" the disagreement with the landlord regarding the payment of March and April rent.

The landlord says the tenants were served with the notice. The tenants have provided evidence that they were not served with this notice. The onus or burden of proof is on the party making the claim. When one party provides testimony/evidence of the events in one way, and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. Based on the sworn testimony

before me, I am not satisfied that the tenants were properly served with the Ten Day Notice to End Tenancy for Unpaid Rent.

For these reasons, I find that the landlord has failed in his burden of proof to demonstrate that the tenants were properly served with the notice. Consequently, I dismiss the landlord's application for an Order of Possession for unpaid rent.

Summary of Evidence – Monetary Order

The landlord gave evidence that this month to month tenancy commenced on August 1, 2007. He submitted into evidence a copy of the written tenancy agreement. Rent for the period in question was established at \$750.00 per month, payable on the first of each month. The landlord said that he continued to hold the \$375.00 security deposit paid by the tenant on July 15, 2007. The landlord gave sworn testimony that the male tenant was personally served with the Application for Dispute Resolution in this matter (the hearing package) on April 19, 2010.

The landlord testified that the tenants did not pay rent for March or April 2010. On April 13, 2010, the landlord applied for an Order of Possession for non-payment of rent. In the April 13, 2010 application for dispute resolution, the landlord asked for a monetary award of \$2,050.00. The landlord testified that rent remains owing for March, April and May 2010. In addition to this unpaid rent, the landlord is seeking a monetary award for \$500.00 to repair damage caused by the tenants to the rental premises and the cost of filing this application.

Analysis and Findings – Monetary Order

The landlord's evidence that the tenants had not paid rent for March and April 2010 was undisputed. However, the tenants testified that they were performing maintenance and cleaning duties at this rental property on the basis of an oral agreement with the landlord's building manager. They testified that the landlord's representative who was

dealing with them on this matter said that he would pursue this with the landlord. They maintain that he told them that he believed that an arrangement could be worked out whereby they could continue to perform these duties in exchange for their unpaid rent.

The landlord's representative at the hearing could not speak to whatever oral agreement had been arranged between the landlord's building manager and the tenants. He did note that the tenants have nothing in writing to confirm their assertion that the landlord was allowing them to live in the rental premises in exchange for work that they were performing in this rental property.

In considering the landlord's application for unpaid rent for March and April 2010, I remain somewhat sceptical as to the tenants' claim that the landlord permitted them to provide cleaning and repair services in exchange for work that they performed to clean and maintain the landlord's building. However, their allegation that they had been performing these tasks in the building for some time was undisputed by the landlord. The landlord did not provide any specific evidence to refute their testimony regarding the oral agreement that they maintained was in place.

On this basis, I dismiss the landlord's application for a monetary order to recover unpaid rent for March and April 2010, as the landlord has not met the burden of proof required to make such an order.

I deny the landlord's request for a monetary order for damage to the rental premises with leave to reapply. The landlord submitted no photographs, inspection reports, descriptions of damage, receipts, invoices or estimates to substantiate this claim. The landlord provided insufficient evidence to support the claim for \$500.00 in damage to the rental premises.

Filing Fee

As the landlord was unsuccessful in this application, I deny the landlord's application to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's applications for the reasons outlined in this decision. I dismiss the landlord's application for a monetary order for damage to the rental premises with leave to reapply.

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*.