

DECISION

Dispute Codes OPR MNR O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

The Tenant confirmed receipt of the hearing package which was slid under her door at the rental unit.

The Landlord, the Tenant, and the Tenant's legal advocate appeared, acknowledged receipt of evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the male and female Tenant entered into a fixed term tenancy beginning February 1, 2010 and was set to expire on January 31, 2011. Rent is payable on the first of each month in the amount of \$885.00 and the Tenants paid a security deposit of \$442.50 on January 28, 2010.

The Landlord confirmed that the 10 Day Notice to End Tenancy dated June 3, 2010 was submitted in their evidence was issued to only the male Tenant. He later confirmed that another 10 Day Notice was issued on June 9, 2010, listing both Tenants and was posted to the Tenants' door.

The Landlord testified that the Tenant paid \$885.00 on June 4, 2010 with a money order, \$600.00 on July 5, 2010 with a money order, and \$885.00 on August 1, 2010 with a money order. The Landlord argued that the rent was previously paid by electronic fund transfer (EFT) and they were not informed by their bank until August 4, 2010 that the Tenants' EFT had been cancelled. The Landlord stated they are seeking \$1,471.00 however he was unable to provide detail on what this amount was comprised of. He did stated that he was seeking \$50.00 in NSF fees for the returned EFT from August 2010 and confirmed that this is not provided for in the tenancy agreement.

The Legal Advocate argued the Landlord has failed to substantiate his monetary claim and that the Landlord reinstated the tenancy when they accepted the money order payments on June 4, 2010, July 5, 2010, and August 1, 2010, as receipts were not issued to the female Tenant for these payments.

The Legal Advocate referred to the documentary evidence which supports her testimony that the Tenant put a stop to the EFT on April 29, 2010 and that the Tenant informed the Landlord of this on April 29, 2010 however the Landlord ignored this information and continued with the EFT causing the Tenant to incur additional bank charges.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant

must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss. The party making application has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence.

In this case the evidence supports that a 10 Day Notice to End Tenancy was issued on June 3, 2010 for unpaid rent of \$885.00 that was due on June 1, 2010. In addition, there was a second 10 Day Notice to End Tenancy issued in the name of both Tenants on June 9, 2010, for \$885.00 due June 1, 2010. The Landlord provided testimony that June 2010 rent was paid in full on June 4, 2010, with a money order in the amount of \$885.00.

Based on the aforementioned I find the evidence supports that the Tenant paid her rent in full on June 4, 2010, within the 5 day requirement for the 10 Day Notice to End Tenancy issued June 3, 2010, and therefore the tenancy was reinstated. As a result the 10 Day Notice issued June 9, 2010 was not valid as June 2010 rent was not outstanding when this notice was issued.

The Landlord was not able to substantiate his monetary claim of \$1,471.00 nor is there evidence before me to support that the Landlord suffered a loss of \$50.00 which was allegedly charged to them by their bank for the returned EFT.

Based on the aforementioned I find the Landlord has failed to provide sufficient evidence to support his claim. Therefore, I hereby dismiss the Landlord's application.

Conclusion

The 10 Day Notice to End Tenancy issued June 3, 2010 is HEREBY CANCELLED and is of no force or effect.

The 10 Day Notice to End Tenancy issued June 9, 2010 is HEREBY CANCELLED and is of no force or effect.

The Landlord's application is HEREBY DISMISSED, without 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*.

Dated: August 18, 2010.

Dispute Resolution Officer