



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This was an application by the landlord for an order for possession, a monetary order and an order to retain the security deposit on partial satisfaction of the monetary order. The hearing was conducted by conference call. The landlord and the tenant participated in the hearing. One intended witness called into the hearing and was present at the commencement of the hearing. The landlord also had a witness standing by. I directed the witness to leave the conference and advised the parties that the witnesses would be called if their evidence was required. There is a bitterly acrimonious relationship between the parties. During the hearing I determined that the evidence proposed to be tendered by the parties' witnesses was primarily concerned with various conflicts between the parties and not sufficiently relevant to the matters in dispute to justify hearing the witnesses testimony.

The hearing was originally scheduled to be heard by conference call on July 28, 2010, but it was adjourned for the reasons set out in my decision dated July 29, 2010.

Issues(s) to be Decided

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental property is a trailer park. The rental unit is a manufactured home on a pad in the park. The landlord testified that there is no written tenancy agreement, but the

tenancy began on or about June 1, 2007. The landlord testified that monthly rent was \$400.00 and the tenant paid a security deposit of \$200.00 on May 24, 2007. She submitted a photocopy of a receipt for the payment of \$600.00 dated May 24, 2007 whereon it was noted that Of the \$600.00 payment, \$200.00 was a deposit and \$400.00 was for rent.

The tenant acknowledged that the rent for the manufactured home was \$400.00 per month, but she said that after the tenancy started the manager of the park agreed that the tenant could reduce the rent to \$300.00 per month because there were deficiencies in the rental unit. The tenants claimed that they received a continuing rent reduction from the manager of the park due to the problems with the manufactured home and because the male tenant performed work and equipment repairs in return for a reduced rent. The former manager of the park is no longer employed and there is no written evidence to confirm the granting of a rent reduction.

The applicant testified that the park was owned by her grandfather and after his death the executrix of the estate authorized the applicant to manage the rental property. She said that in August or September, 2009 she told the tenants they were required to pay the full rent of \$400.00 per month and they were to stop performing work on the rental unit.

The landlord served the tenant with a 10 day Notice to End Tenancy on or about April 30, 2010 by posting to the rental unit. The tenant said she was served with a Notice to End Tenancy on May 3, 2010, but the Notice she said she received was slightly different than the one produced by the landlord. The tenant submitted a copy of the Notice she said that she received, but she did not provide a copy to the landlord. The Notices differ as to the date signed and the date the tenants were required to move out of the rental unit. The Notice submitted by the tenant is dated May 3, 2010; it alleged that the tenant failed to pay rent in the amount of \$1,000.00 that was due on May 1, 2010 and notified the tenants that they had until May 13, 2010 to move out. The dates on the Notice were initialed by the landlord, presumably to show that they had been

changed or corrected. The version submitted by the land was dated April 30, 2010 and required the tenant to move out by May 10, 2010

The tenants acknowledged receive the Notice to End Tenancy and confirmed that they have not made an application for dispute resolution to cancel the Notice.

Analysis and conclusion

At the hearing on July 28, 2010 the tenant claimed that the applicant had no status to act as landlord although they claimed to have evidence to support their position, despite having for than a month to do so, they submitted no evidence to substantiate their statement. The applicant testified that she is authorized to act as landlord and she submitted some documentation to support her position. I find that the applicant is the landlord for the purposes of this proceeding.

The *Residential Tenancy Act* permits a tenant to withhold rent only after obtaining an order from a Dispute Resolution Officer except in the case where the tenant has expended money for emergency repairs and then only when the tenant has made two attempts to contact the person appointed to perform emergency repairs and after the tenant has given the landlord a written account of the amount paid for emergency repairs accompanied by a receipt for each item claimed. The tenants have not submitted any evidence that would establish that they had grounds to withhold rent.

On the evidence presented by both parties the tenant for the unit was \$400.00 per month. I find that even if the tenants received an informal rent reduction from the now departed manager, the reduction ended when the landlord told the tenants to cease performing work to the rental unit and to commence paying the full rent. This was in or about August, 2009. The tenants did not make an application under the *Residential Tenancy Act* to claim a rent reduction and they did not pay the full rent of \$400.00. I find that the tenants have been in arrears of rent since September, 2009. I find that the Notice received by the tenants was a valid and effective form of Notice. The tenants

did not pay any rental arrears and did not apply to dispute the 10 day Notice to End Tenancy after they received it on May 3, 2010. They had five days from the date they received the Notice to do one or the other; if they took the position that no rent was due to the landlord it was open them to apply for dispute resolution to cancel the Notice to End Tenancy.

Section 46 (5) of the *Residential Tenancy Act* provides that If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within five days of receiving 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 to which the notice relates by that date.

Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an Order of that Court.

I have found that the landlord notified the tenants to pay the full \$400.00 rent commencing September 1, 2010. They continued to pay \$300.00 per month for each month that followed. I find that the landlord has established a claim for unpaid rent totalling \$1,300.00 for the thirteen month period from September, 2009 to and including September, 2010. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,350.00. I order that the landlord retain the deposit and interest of \$204.79 and I grant the landlord an order under section 67 for the balance due of \$1,145.21. This order may be filed in the Small Claims Court and enforced as an order of that Court.