



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPR, CNR, MNR, FF*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on July 01, 2007. The rent is \$925.00 per month due on the first day of each month.

The landlord testified that since the start of tenancy, the tenant either did not pay rent on time or did not pay at all. She stated that over time the rental debt rent owed by the tenant increased and is now approximately \$17,000.00. The tenant denied this and stated that he paid rent in cash and the landlord did not give him receipts. The tenant stated that recently he started paying by money order as proof of payment of rent. The tenant did not file any copies of the money orders.

The landlord stated that her spouse gave the tenants receipts for cash but not for the money orders. The landlord filed copies of receipts provided to the tenant.

The tenant failed to pay rent for July and on July 14, 2010, the landlord served the tenant with a ten day notice to end tenancy. The tenant filed an application to dispute the notice but agreed that he owed rent to the landlord for August and September.

The landlord testified that the tenant owed a lot more than the \$5,000.00 that the landlord was claiming. The landlord did not provide a clear statement of rent owed by the tenant and was not sure of the amounts paid by money order. Starting in January 2010, the tenant paid rent for January and February. The landlord stated that this was owed from prior months, but was not able to provide accurate information. The landlord stated that the tenant may have paid rent for March and May by money order. Both parties agreed that rent for April was paid.

The landlord stated that the tenant owed \$625.00 for June and \$925.00 each for the months of July, August and September. The tenant argued that he had paid rent for June and July by money order but did not file any evidence to support his claim.

The landlord has applied for an order of possession, effective September 30, 2010 and a monetary order for rent owed.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy on July 14, 2010 and by his own admission, did not pay overdue rent as of the date of this hearing. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective September 30, 2010. This Order may be filed in the Supreme Court for enforcement.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant stated that he had paid rent for June and July while the landlord argued that he had not. Since the tenant did not file any evidence to support his claim, I find that he owes \$625.00 for rent for June and \$925.00 for each of the months of July, August and September.

Overall the landlord has established a claim of \$3,400.00 for unpaid rent. Since the landlord has proven her claim, she is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$3,450.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p.m. on September 30, 2010**.

I also grant the landlord a monetary order in the amount of **\$3,450.00**

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: September 10, 2010.

Dispute Resolution Officer