

DECISION

Dispute Codes:

OPR, CNR, OPC, CNC, MNR, MNSD, 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 landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for the landlord to comply with the *Act*.

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 and a monetary order for unpaid rent?

Background and Evidence

This month to month tenancy started on March 15, 2007. The current rent is \$930.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$412.50.

The landlord stated that the tenant repeatedly paid rent late or by an NSF cheque. The landlord filed evidence to support this. The evidence includes six copies of rent cheques for the months of January 2010 to June 2010 all dated for the 15th of the month. In addition the cheques for March, April and May were returned for insufficient funds.

On August 13, 2010, the landlord served the tenant with a 30 day notice to end tenancy for repeated late payment of rent. The tenant disputed the notice in a timely manner. The tenant stated that the reason for the delay is that she is on a fixed income and depends on a rent subsidy for which she had to provide rent receipts and the landlord did not provide these receipts in a timely manner. The landlord argued that she refused to write a receipt on the first of the month for a cheque that was dated for the 15th of the month.

The tenant stopped paying rent since August 2010 and acknowledged that at the time of the hearing she had owed rent for the months of August, September and October. On September 15, 2010, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

The landlord has applied for an order of possession effective two days after service on the tenant and a monetary order for unpaid rent (\$2,790.00) plus the filing fee (\$50.00).

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on September 15, 2010 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Since I have upheld the notice to end tenancy for nonpayment of rent, it is unnecessary to process the notice to end tenancy for cause.

I find that the landlord has established a claim of \$2,790.00 for unpaid rent and \$50.00 for the filing fee. I order that the landlord retain the security deposit of \$412.50 plus the accrued interest of \$11.21 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$2,416.29. 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 two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,416.29**.

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 07, 2010.

Dispute Resolution Officer