



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR FF

Introduction

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

Service of the hearing documents, by the Landlords to the Tenants, was done via registered mail on October 7, 2010. Canada Post receipts were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that the parties entered into a verbal month to month tenancy effective May 15, 2010. The Landlord initially stated that rent was payable on the 15th of each month in the amount of \$850.00 but that she later verbally agreed to have rent paid on the 25th of each month. She stated the Tenants paid a security deposit of \$425.00 on May 5, 2010.

The Tenant provided opposing testimony that their tenancy began on May 7, 2010, when they moved into the unit. Rent was initially payable on the 1st of each month in the amount of \$850.00 and that after he broke his ankle the Landlord accepted rent paid by Income Assistance which arrived by the 25th of each month. He argued that the payments were sent directly to the Landlord from Income Assistance until he was cut off

in October 2010. He stated that his rent was never payable on the 15th of the month and confirmed he paid a security deposit of \$425.00 on May 5, 2010.

The Landlord changed her testimony and confirmed rent was paid directly to her by Income Assistance from either June or July 2010 which is why she agreed to have rent paid on the 25th of each month. For clarity I asked the Landlord to confirm when rent would be paid and she said that September 2010 rent would not be paid until September 25, 2010. The Landlord stated that when September rent was not paid she issued a 10 Day Notice to End Tenancy. She confirmed she did not provide a copy in evidence and once she located her copy she testified that it was issued on September 29, 2010, that she served it personally to the Tenants on September 29, 2010 and that it was for \$850.00 of unpaid rent that was due September 1, 2010.

The Tenant confirmed that his copy of the 10 Day Notice read the same as what the Landlord testified and he questioned how she could have issued the notice if she was “only anticipating” they were not going to pay their rent. He stated that he had a receipt from Income Assistance which confirms the Landlord was issued payment for September 2010 rent and acknowledged that he did not submit this document into evidence. The Tenant confirmed he has not paid October 2010 rent because that is when his Income Assistance was cut off and that he entered into a verbal agreement with the Landlord to make payments for October rent which she agreed to and later reneged on. He argued that he has November 2010 rent but that the Landlord refuses to come and pick it up.

In closing the Landlord argued that she has not received September, October or November 2010 rent from either Income Assistance or the Tenants.

Analysis

The Landlord and Tenant provided testimony that the 10 Day Notice to End Tenancy which was issued on September 29, 2010, for unpaid rent of \$850.00 which was due on September 1, 2010.

The evidence supports rent was payable, by mutual agreement, on the 25th of each month therefore I find that the 10 Day Notice issued by the Landlord does not meet the form and content requirements of section 52 Act as the Notice states the unpaid rent was due September 1, 2010. The Landlord provided further contradictory testimony when she initially advised that rent was due on the 15th of each month and later changed her testimony only after the Tenant testified. Based on the aforementioned I find the 10 Day Notice to End Tenancy to be invalid.

Section 26 of the Act provides that a Tenant must pay rent when it is due in accordance with the tenancy agreement. In this case I find rent was to be paid by the 25th of each month and the testimony supports the Landlord has not been paid October or November 2010 rent. There is opposing testimony pertaining to if September 2010 rent was paid however in the absence of evidence to prove the Landlord did receive September 2010 rent I hereby grant the Landlord a monetary order for \$2,550.00 (3 x \$850.00 September, October, and November 2010).

The Landlord has been partially successful with her application; therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy dated September 29, 2010 is HEREBY cancelled and is of no force or effect.

The Landlord's decision will be accompanied by a Monetary Order in the amount of \$2,600.00 (\$2,550.00 + \$50.00). This Order must be served on the respondent Tenants and may be filed in Provincial Court and enforced as an Order of that Court.

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: November 05, 2010.

Dispute Resolution Officer