

DECISION

Dispute Codes:

OPR; OPC; OPL, MNR

Introduction

This is the Landlord's application for an Order of Possession for Unpaid Rent, Cause and Landlord's Use; and a Monetary Order for unpaid rent.

Both parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order in the amount of \$5,000.00?

Background and Evidence

There is no written tenancy agreement between the parties. The rental unit is a basement suite with its own kitchen and bathroom. The Landlord is the Tenant's father-in-law and resides in the upper suite of the house. The Tenant did not pay a security deposit to the Landlords. Monthly rent is \$600.00.

The Landlords issued a Notice to End Tenancy for Unpaid Rent on July, 21, 2010, which declares the Tenant owes rent in the amount of \$5,000.00 that was due "ASAP".

The Landlord has not issued a Notice to End Tenancy for Cause or a Notice to End Tenancy for Landlord's Use.

The Landlord's agent could not provide testimony with respect to how much rent was owed or for what months.

The Tenant provided receipts for rent paid. The receipts for the months of June and July, 2010 are marked "for use and occupancy only". The receipts for the months of September, October and November, 2010, do not have this notation.

Analysis

The Act requires tenancy agreements to be in writing, however the Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[emphasis added]

I find that an oral tenancy agreement exists between the parties.

The Landlord has not issued a Notice to End Tenancy for Cause, or a Notice to End Tenancy for Landlord's Use and therefore his application for an Order of Possession for cause and Landlord's Use is cancelled.

The Notice to End Tenancy for Unpaid Rent does not disclose when the rent was due. The Landlord has not provided sufficient evidence of how much rent, if any, the Tenant owes to the Landlord. Although the Landlord issued receipts for "use and occupancy only" for the months of August and September, 2010, I find that the Landlord reinstated the tenancy in October by accepting rent from the Tenant.

Therefore, the Landlord's application is dismissed in its entirety. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Landlord's application is dismissed in its entirety. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act

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 26, 2010.
