



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, RP, OPR, MNSD, FF

Introduction

This was the hearing of an application by the tenant to cancel a Notice to End Tenancy for unpaid rent. The application was filed December 3, 2010 and was scheduled to be heard by conference call on December 22, 2010. The landlord filed his own application for a monetary order and an order for possession on December 16, 2010. The landlord's application was scheduled to be heard by conference call on January 12, 2010. Because the same issues and findings of fact are involved in both applications I obtained the landlord's application and I advised the parties at the hearing that both applications would be heard together on December 22, 2010. The landlord and the tenant attended the hearing. the landlord was assisted by his somn and I heard testimony from the landlord's witness, D.R.

Issues(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or should the landlord be granted an order for possession pursuant to the Notice?

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

Background and Evidence

The rental unit is a basement suite in the landlord's house. The landlord advertised the unit for rent at a monthly rent of \$595.00. The tenant responded to the advertisement and met the landlord at the rental unit on November 1, 2010. She agreed to rent the

unit with laundry facilities for a monthly rent of \$610.00 with a security deposit of \$305.00. According to the landlord the tenant started moving in on November 2, 2010 and gave him a cheque in the amount of \$570.00 on November 3, 2010. The landlord said that \$305.00 of that amount was to go to the deposit leaving \$345.00 to pay which the tenant said she would pay within a week. The landlord testified that the tenant has avoided signing a tenancy agreement. He served the tenant with a 10 day Notice to End Tenancy for unpaid rent on December 1, 2010 by posting it to the door of the rental unit. He served a second Notice to End Tenancy for unpaid rent on December 10, 2010. The notice alleged that the tenant failed to pay rent in the amount of \$345.00 that was due on December 1, 2010.

The tenant paid rent for December in the amount of \$610.00. The landlord did not issue a receipt for the payment of December's rent. The payment was made on the tenant's behalf by the Ministry of Social Services.

The tenant claimed that she refused to pay the \$305.00 damage deposit because there were necessary repairs to be done in the rental unit and the landlord refused to perform them. The landlord denied that any repairs were necessary. He said the tenant that had occupied the rental unit moved to an upstairs suite and the condition inspection form shows that the rental unit was left in perfect order. The landlord's witness also said the rental unit was not damaged and did not need repairs.

The tenant testified that she moved into the rental unit on November 5, 2010. She said that she paid the landlord \$570.00 and he accepted it as full payment for November because she did not occupy the rental unit for the full month. She said that she has not refused to sign a tenancy agreement, but she has not received a copy from the landlord. The tenant acknowledged that she owes the landlord \$305.00 for the security deposit.

Analysis and Conclusion

On December 3, 2010 the tenant applied to dispute the Notice to End Tenancy served by the landlord on December 1, 2010. The landlord was later advised that he should serve a second Notice to End Tenancy and he did so on December 10, 2010. The tenant did not submit another application to dispute the second Notice. The second Notice was intended to replace the first Notice which was defective in that it was served on December 1, 2010 and referred to rent that was due on December 1, 2010. I will treat the tenant's application as a valid application to dispute the landlord's second replacement notice.

The landlord claimed in the Notice to End Tenancy that the tenant owed rent that was due December 1; he said that \$345.00 was owing for December, however the tenant's rent for December was paid in full and it was accepted without the qualification that it was received for use and occupancy. The Notice given was defective because it referred to an incorrect amount said to be owing for December. I find that the Notice should be cancelled for that reason and for the further reason that the landlord effectively reinstated the tenancy by accepting rent for December without informing the tenant that it was received for use and occupancy only. On the evidence I find that the tenant failed to pay the landlord's required security deposit in the amount of \$305.00. It is open to the landlord to serve the tenant with a 1 month Notice to End Tenancy for cause pursuant to section 47 (1) (a) of the *Residential Tenancy Act* on the basis that the tenant has not paid the security deposit within 30 days of date it is required to be paid under the tenancy agreement. The landlord's application for an order for possession pursuant to the Notice to End Tenancy for unpaid rent is dismissed. The Notice is cancelled and the tenancy will continue.

I do not accept the tenant's testimony that the landlord agreed to accept \$570.00 as the full rent for November. I find that the tenant is obliged to pay the landlord \$40.00 for November rent. The landlord is entitled to a monetary order in the amount of the unpaid rent for November. The landlord is entitled to recover the \$50.00 filing fee paid for his application for a total award of \$90.00 and I grant him an order under section 67 in the

said amount. This order may be registered in the Small Claim court and enforced as an order of that court.

If the tenant does not pay the required security deposit the landlord may serve the tenant with a one month Notice to End Tenancy for cause.

The tenant has not proved on a balance of probabilities that any repairs are required; her claim for a repair order is dismissed.

Dated: December 22, 2010.
