



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 31, 2007, that the female Tenant signed a written tenancy agreement but the male Respondent did not sign the agreement, and that when this tenancy began the female Tenant agreed to pay monthly rent of \$1,000.00 on the first day of the month.

The Landlord and the Tenant agree that on May 02, 2009 the Landlord agreed to reduce the rent to \$700.00, effective on May 01, 2009. The Landlord stated that he only agreed to reduce the rent for a "couple of months". The Tenant stated that the rent reduction was indefinite.

The Tenant submitted a copy of a document, signed by the Landlord and the female Tenant, which clearly states the rent will be reduced to \$700.00, effective May 01, 2009. There is nothing in the letter that indicates the rent reduction is temporary.

The Landlord and the Tenant agree that the Tenant has paid monthly rent of \$700.00 in December of 2010, January of 2011, February of 2011, and March of 2011. The Landlord contends that the Tenant owes an additional \$300.00 for those months and the Tenant contends that her rent has been paid in full for those months. The Landlord is seeking a monetary Order for unpaid rent for those months, in the amount of \$1,200.00.

The Landlord and the Tenant agree that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on February 22, 2011 or February 23, 2011, which had an effective date of March 03, 2011. The Notice declared that the Tenant owed \$900.00 in rent that was due on March 01, 2011.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,000.00 on the first day of each month. I find that the parties entered into a written agreement to reduce the rent to \$700.00, effective May 01, 2009. As there is nothing in the document that indicates the rent reduction will be temporary and the Tenant denies verbally agreeing that the rent reduction was temporary, I find that the monthly rent is currently \$700.00 and that it will remain at \$700.00 until it is increased in accordance with the *Act*.

Based on the undisputed evidence presented at the hearing, I find that the Tenant paid \$700.00 in rent for December of 2010, January of 2011, February of 2011, and March of 2011. As she was only required to pay \$700.00 in rent for those months, I find that all of her rent has been paid in full. I therefore dismiss the Landlord's Application for a monetary Order for unpaid rent.

Based on the undisputed evidence presented at the hearing, I find that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on February 22, 2011 or February 23, 2011, which was served pursuant to section 46 of the *Act*.

Section 46(4) of the *Act* stipulates that a Notice to End Tenancy has no effect if the overdue rent has been paid with five days of the date the tenant receives the Notice to End Tenancy. In these circumstances I find that the rent was not overdue when the Landlord served the Notice to End Tenancy. I therefore find that the rent has been paid within five days of the date the Notice was received. I therefore find that the Notice to End Tenancy is of no effect and I dismiss the Landlord's Application for an Order of Possession.

Conclusion

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

As the Landlord has failed to establish that eh ahs grounds to end this tenancy for unpaid rent, I find that this tenancy will continue until it is ended in accordance with the *Act*.

Dated: March 23, 2011.

Residential Tenancy Branch