



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, MNDC, 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, a late fee and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for the filing fee.

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 or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the landlord entitled to retain the security deposit in partial satisfaction of his claim?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on September 01, 2010. The rent is \$1,050.00 per month due on the first day of each month. The tenant paid a security deposit of \$525.00. The tenancy agreement contains a clause that requires the tenant to pay a fee of \$25.00 if rent is late.

The landlord did not receive rent on May 01, 2011 and on May 09, 2011, he served the tenant with a notice to end tenancy tenant. The tenant stated that she did not owe rent because she had paid rent twice on December 01, 2010.

The tenant file two receipts dated December 01, 2010. She stated that she visited the rental office twice that day at 10:30 am and 4:30 pm. During each visit she paid \$1,050.00 by money order. The tenant stated that the receipts were issued to her by the same clerk. These receipts are numbered 678079 and 688281.

The tenant stated that the reason for paying rent for December twice was so that she could skip a month's rent when she got scheduled for her upcoming surgery. In her documentary evidence, she wrote *"this \$1050.00 was so that when I went for treatments and medical attention for migraines my rent would be covered!"*

There is no notation on the receipt that this was a second payment for the same month. One of the receipts shows that the mode of payment was both by cheque and money order. The tenant did not file any evidence to support the purchase of the money orders or bank statements to show the source of the funds for two payments of rent.

The tenant has filed receipts for subsequent months which are numbered and dated as follows:

Date	Number	Amount
January 30, 2011	No. 678137	\$1,050.00
March 01, 2011	No. 678165	\$1050.00
April 01, 2011	No. 688351	\$525.00
March 2011	No. 688352	\$525.00

The landlord stated that the tenant did not make two payments in December 2010. He filed a statement showing payments made by the tenant from the start of tenancy. Every month from October 2010 to March 2011 the tenant made one payment of \$1,050.00. The statement shows that the tenant paid rent for April in two instalments of \$525.00 each, that rent for May 2011 is not paid and that the tenant owes \$1,075.00 which includes the late fee for May.

The tenant also filed a decision from a previous hearing at a different rental address but same landlord. The landlord had served the tenant with a ten day notice to end tenancy for non payment of rent. At the hearing, the ledger was tallied with the tenant's receipts and the Dispute Resolution Officer found that rent was up to date. The tenant was awarded compensation for the inconvenience she endured.

The tenant referred to this decision, stating that she does prepay on occasion and that the landlord does not keep proper records. She stated that in December 2010 she had received a cheque of \$5,000.00 from self employment and chose to pre pay rent for a future month so that she could skip paying rent for a month when necessary.

The landlord stated during the hearing that if the tenant paid rent for May within 48 hours he would agree to cancel the notice to end tenancy.

Analysis

Based on the sworn testimony of both parties, I find that the tenant agreed that she had not paid rent on May 01, 2011. However, I find that the tenant's version of having paid rent twice in December 2010 lacks credibility for the following reasons:

- One of the two receipts for rent paid on December 01, 2010 is out of sequence by a substantial number, even though the tenant stated that she made both payments on the same day. Based on the number of the second receipt and the numbers of the other receipts filed by the tenant, the receipt for the alleged second payment in December 2010 would have had to been issued to the tenant sometime in March 2011.
- Both receipts for December were allegedly issued by the same person, but there is no notation on the receipt to say that the second payment was pre paid rent for a future month.
- The receipts issued for April are for two installments of April's rent in amounts of \$525.00 each and this is noted on the receipt.
- The tenant stated that she paid rent for January on January 01, 2011 but did not file a receipt. The tenant filed two receipts of \$1,050.00 each for December and one each for the months of February and March. The tenant also filed two receipts for April for rent paid in two installments for a total of \$1,050.00.

Based on a balance of probabilities, I find it highly unlikely that the tenant would pay rent twice in the month of December and make a claim against this alleged overpayment payment, five months later. The tenant could have filed additional evidence to support her claim of having made two payments in December by way of bank statements showing a deposit of \$5,000.00 that she said she received in December and the subsequent withdrawal of double one month's rent and/or copies of the money orders.

In addition, the landlord filed a statement of an inquiry of the tenant's rent payments and this shows that the tenant did not over pay rent in December and that rent for May is outstanding. Therefore I find that the tenant owes rent for May.

Accordingly, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$1,050 for unpaid rent for May 2011, \$25.00 for the late fee and \$50.00 for the filing fee. I order that the landlord retain the security deposit of \$525.00 in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$600.00**. 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 and a monetary order in the amount of **\$600.00**.

The tenant's application is dismissed. Therefore she must bear the cost of filing her application.

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: June 09, 2011.

Residential Tenancy Branch