



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, OPC, OLC, MNR, 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 and the filing fee. The tenant applied for an order directing the landlord to comply with the *Act* and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, I asked for clarification of the tenant's name. The landlord's application named a different party as the respondent. After a brief discussion, it was determined that the tenant went by two names and accordingly the applications of both parties were heard together.

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 tenant entitled to an order directing the landlord to comply with the *Act*? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on July 01, 2011. The rent is \$780.00 per month due on the first of each month. The tenant occupies the lower level of the home. The landlord lives upstairs.

The tenant testified that the landlord disturbed him a few times by calling his phone and/or by knocking on his door at night. On one occasion, late at night the landlord knocked on the tenant's door to request him to clear the outside area of his belongings.

The tenant explained that the boxes that were stored outside, contained clothing that would be given to a relative when she visited, in August. The landlord also complained about the activities of the tenant's child and a visiting child, which included climbing the fence and causing damage to it.

The relationship between the two parties deteriorated and on July 29, 2011, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant had damaged the landlord's property and had breached a term of the tenancy agreement. The tenant applied for dispute resolution in a timely manner – on August 03, 2011, but did not dispute the notice. The tenant applied for an order directing the landlord to comply with the *Act*.

The tenant testified that the landlord does not provide 24 hour notice to enter the unit and disturbs the tenant by calling or knocking on their door, late at night. The tenant did not pay rent for August when it was due on August 01, 2011. On August 03, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant stated that he was waiting for the outcome of the hearing before he would pay rent.

As of the date of the hearing (August 31), the tenant had not paid rent for August.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on August 03, 2011 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective on or before 1:00 p.m. on September 10, 2011. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$780.00 for unpaid rent and \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$830.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act* is moot and accordingly dismissed. The tenant must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on September 10, 2011. I also grant the landlord a monetary order in the amount of **\$830.00**

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: August 31, 2011.

Residential Tenancy Branch