



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, OPB, OPR, CNR, ERP, MT, RP, SS

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants have put on their applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue, to be dealt with together.

I therefore will deal with landlords request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent and his request for an order for the outstanding rent, and I will deal with the tenants request for an order cancelling the Notice to End Tenancy. I dismiss all the remaining claims with liberty to re-apply.

Background and Evidence

The rent for this rental unit is \$980.00 per month.

On September 6, 2011 the landlord served the tenant with the Notice to End Tenancy that stated that \$1340.00 rent was outstanding.

The landlord testified that:

- The tenant fell behind on the rent, and still owed \$360.00 from August 2011.
- When he asked the tenant for the outstanding rent she told him that he could either accept payments on the outstanding rent or give her an eviction notice.
- In September the tenant failed to pay the September 2011 rent thereby increasing the overdue rent to \$1340.00
- Therefore since he cannot afford to carry the tenant's outstanding debt he gave her a Notice to End Tenancy.
- The tenant did not pay the outstanding rent within the five day grace period and therefore he is requesting an Order of Possession and an order for the outstanding rent.
- He has subsequently received three cheques in his mailbox that total \$1340.00 however he does not know whether they will clear the bank as he has not attempted to cash them.

The tenant testified that:

- She did fall behind on the rent, however the landlord agreed to accept payments on the outstanding rent and she has stuck to that payment plan.
- Nothing was put in writing but the landlord agreed verbally and shook her hand.
- He then went back on his word and gave her a Notice to End Tenancy. She has subsequently paid the outstanding rent by cheque into his mailbox and although they were not paid within the five day grace period they were paid according to their agreed-upon payment plan.

- She has not pay the October 2011 rent pending the outcome of this hearing today however she can pay the October 2011 rent by approximately October 23, 2011.

Analysis

It is my finding that the tenant has not met the burden of proving that the landlord ever agreed to accept payments on the outstanding rent that she owes.

At the time that the landlord served the tenant with the Notice to End Tenancy the tenant owed \$1340.00 in outstanding rent, and she did not pay that rent within the five day grace period.

Therefore it is my decision that I will not set aside the Notice to End Tenancy and this tenancy ends pursuant to that notice.

I have therefore issued an Order of Possession to the landlord, and I have also issued a monetary order for the full outstanding amount of \$1340.00; however if the landlord finds he is able to cash the cheques provided to him, that will be considered payment of that outstanding amount and will satisfy the order.

I will also order recovery of the landlords filing fee.

Conclusion

Tenant's application

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

Landlord's application

I have issued an Order of Possession that is enforceable two days after it's served on the tenant.

I have issued a monetary order to the landlord in the amount of \$1390.00

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: October 11, 2011.

Residential Tenancy Branch