



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord provided affirmed testimony that he served the Tenant, in person with the Application for Dispute Resolution and Notice of Hearing on November 23, 2011. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

On the Landlord's Application he has listed two individuals as tenants, BP and SC. The Landlord submitted the tenancy agreement into evidence prior to the hearing. The tenancy agreement shows that BP and another person, JT are tenants. The Landlord stated that JT gave proper notice and moved out of the rental unit some time ago. The Landlord states that he wants to add SC as a tenant, however, he has not obtained a new tenancy agreement with BP and SC both on it. BP is the only tenant who is signatory to the existing tenancy agreement. As the Landlord has not entered into a tenancy agreement with SC, I find that I cannot deem SC to be a tenant as under the Act I have no authority to amend the existing tenancy agreement.

For the purposes of the balance of this decision my reference to "the Tenant" refers to BP only.

The Landlord stated that the Tenant was away on vacation at the time the 10 Day Notice to End Tenancy for unpaid rent was served. The Landlord then applied for Dispute Resolution on November 22, 2011. The Landlord states that the Tenant has since resolved the unpaid rent and they have mutually agreed to cancel the Notice and reinstate the Tenancy. The Landlord states that the only issue remaining on his

Application is the request for reimbursement of his filing fee. As a result, I am granting the Landlord's request to cancel the Notice to End Tenancy and amend the Application so that the only remaining issue is the filing fee.

Issue(s) to be Decided

Should the Tenant be ordered to pay the filing fee?

Background and Evidence

The tenancy began February 15, 2010 and the parties have a written tenancy agreement. The rent pursuant to the tenancy agreement is \$1400.00 per month, however the Landlord states that the Tenant was served with a rent increase in accordance with the Act, and the rent is currently \$1432.00 per month. The rent is due on the first of the month. The Tenant is still in the rental unit. The Landlord states that this Tenant has been good about paying the rent in the past, however, he received an NSF cheque from the Tenant for November 01, 2011. The Landlord states that he tried to call the Tenant several times but received no response, so he issued the 10 Day Notice to End Tenancy to the Tenant. The Landlord stated that the 10 Day Notice was served by registered mail on the Tenant on November 07, 2011 and the Landlord provided a tracking number and receipt from Canada Post as part of his evidence submission in advance of the hearing.

When the Landlord did not receive a response from the Tenant to the 10 Day Notice, he applied for dispute resolution on November 22, 2011. The Landlord states that the Tenant paid the rent and a late fee to the Landlord on November 23, 2011 upon his return from vacation. The Landlord states that they mutually agreed to cancel the Notice and reinstate the tenancy.

Landlord requests that the Tenant should reimburse them for the \$50.00 filing fee for this Application, as he had filed for his Application prior to the Tenant paying the outstanding rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant did not pay the rent until after the Landlord filed his Application. Had the Tenant and the Landlord not reached a mutual agreement to cancel the Notice

and reinstate the tenancy, it is likely that the tenancy would have ended based on the Notice issued by the Landlord as the rent was not paid within five days of the Notice being served.

As a result, I find that it is appropriate to order the Tenant to pay the Landlord for the filing fee for this Application (\$50.00).

Conclusion

I find that the Landlord is entitled to monetary compensation pursuant to section 67 and 72 in the amount of **\$50.00** comprised of the filing fee.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 08, 2011.

Residential Tenancy Branch