



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNR, MNDC, OLC

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenant has applied for more time to cancel a Notice to End Tenancy for unpaid rent. The tenant has also applied to cancel the Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenant has applied for a Monetary Order for money owed or compensation for damage or loss and for an Order for the landlord to comply with the *Act*. As these issues are unrelated to the main issue which is to cancel the Notice to End Tenancy I have determined that these issues will not be dealt with at the hearing today.

With regards to this rule of Procedure 2.3 the landlord has also applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*. As the landlord explains this is in connection with cleaning required in the rental unit I find this is also unrelated to the landlord's main issues which are for an Order of Possession and to recover unpaid rent. The tenant also has opportunity to ensure the unit is left in a reasonably clean condition in accordance with the *Act* at the end of the tenancy. This section of the landlords claim will not be dealt with at the hearing today.

Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel a Notice to End tenancy?
- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on February 01, 2008. This started as a fixed term tenancy and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is now \$577.00 per month and is due on the first day of each month in advance. The tenant paid a security deposit of \$275.00 on January 23, 2008.

The landlord testifies that he purchased the property and took over as landlord on June 20, 2011. The landlord testifies that the tenant always paid his rent late and he told the tenant he would accept it on the 27th of each month for now but the tenant would have to take care of this as rent is due on the first day of each month. On October 28, 2011 the tenant paid his rent for October and the receipt was marked by the landlord to show the rent was paid late and that this is rent is paid up to October 31, 2011. The landlord testifies that he was very clear with the tenant and discussed with the tenant that he was paying his rent three weeks late each month. On November 01, 2011 the tenant failed to pay his rent and the landlord testifies the tenant told the landlord he would pay rent on November 27, 2011. However on November 27 the tenant again failed to pay the rent. The landlord testifies the tenant also failed to pay rent for December, 2011 and the landlord served the tenant with a 10 Day Notice to End Tenancy. This Notice was posted to the tenant's door on December 02, 2011 and has an effective date of December 13, 2011. The Notice states the tenant owes rent of \$1,154.00 for November and December, 2011.

The landlord seeks to have the Notice to End Tenancy upheld and requests an Order of Possession effective as soon as possible. The landlord also seeks a Monetary Order to recover the unpaid rent.

The landlord requests that he receives an Order to keep the tenants security deposit of \$275.00 in partial satisfaction of his claim and seeks to recover his \$50.00 filing fee from the tenant.

The tenant agrees he received the 10 Day Notice on his door. The Notice is deemed to have been received three days after posting it on December 05, 2011. The tenant filed

his application to cancel the Notice on December 12, 2011 however as the fifth day fell on a weekend the tenant was entitled to file his application on the next business day.

The tenant disputes that he owes rent for November, 2011 the tenant testifies that he paid his rent each month in advance on the 27th or 28th of the previous month. The tenant states he has always had this arrangement with his previous landlord but does not keep his receipts to show this. The tenant agrees he did not pay rent for December, 2011. The tenant states he spoke to someone in the Residential Tenancy Branch about the way this landlord writes his receipts.

The tenant presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application to cancel the Notice to End Tenancy and the landlords application for an Order of Possession; I refer the parties to s. 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant argues that he has always paid his rent in advance before the beginning of the month; the landlord argues that this is not the case and the tenant has always paid his rent at least three weeks late.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that the rent is unpaid for November and December and therefore show the landlord has grounds to end the tenancy. This means that if the landlord's evidence

is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In this instance the landlord has provided rent receipts; two for September showing the rent paid on September 02 was paid for August, rent and the one for September 23 was for Septembers rent; the third receipt shows that rent was paid on October 28 and is marked as rent paid for October, 2011. I am satisfied therefore; that the tenant has failed to pay rent for November, 2011 and the rent paid in October was for Octobers rent and was accepted as such. The tenant has raised concerns about the way the landlord writes his receipts but I find the receipts to be clearly written and contain the relevant information.

Consequently, I find the landlord has provided sufficient corroborating evidence to show that grounds exist to end the tenancy and as a result, the Notice is upheld and the landlord is entitled to an Order of Possession pursuant to s. 55 of the Act. The tenant's application to cancel the Notice is therefore dismissed.

I further find that as the landlord has established that the tenant has failed to pay rent for November and December, 2011 the landlord is entitled to recover this rent to the sum of **\$1,154.00** pursuant to s. 67 of the Act.

I therefore Order the landlord, pursuant to s. 38 (4)(b) of the Act, to keep the tenants security deposit of **\$275.00** plus accrued interest of **\$3.78** in partial satisfaction of the landlords claim for unpaid rent.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$1,154.00
Less security deposit and accrued interest	(-\$278.78)
Subtotal	\$875.22

Plus filing fee	\$50.00
Total amount due to the landlord	\$925.22

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$925.22**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

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

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply. As the tenancy will end the tenant's application for an Order for the landlord to comply with the *Act* is dismissed without leave to reapply.

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 30, 2011.

Residential Tenancy Branch