



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, OPC, MNR, FF
Tenant: MT, CNC, CNR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy and to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant testified that she would have all of her belongings removed by the end of today and as such she no longer needed to seek more time to cancel the notice; and did not need to dispute the notices.

The landlord testified that he was unaware the tenant was in the process of vacating the rental unit. I noted that since the landlord had requested an order of possession that I could grant one with the effective date of the notice. The tenant testified that she did not object to an order of possession being issued.

Issue(s) to be Decided

The remaining issues to be decided are whether the landlord is entitled to to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on March 1, 2009 as a month to month tenancy for a monthly rent of \$800.00. The landlord submits that rent was due on the 1st of each month and the tenant asserts that rent was due on the 15th of each month. No written tenancy agreement was entered into, all terms were verbal.

The tenant testified that rent was due on the 15th of each month and that she has witnesses to the verbal agreements made but that they are currently out of the country and not available for this hearing.

The landlord submits that rent has always been due on the 1st of each month and that the only reason the tenant thinks it is the 15th is that she knows that is when the landlord's mortgage is due.

The landlord seeks compensation for rent for the month of January 2012 for which he testified that he has received no rent for January 2012 and for February 2012 the landlord seeks compensation for lost rent as he has not been able to rent out the unit because he did not know if the tenant was moving out.

The tenant testified that she last pay rent before December 15, 2011 for the period December 15, 2011 to January 14, 2012. The landlord testified that he received payment for rent for the month of December as follows: December 2, 2012 - \$400.00; December 12, 2012 - \$200.00; and December 15, 2012.

The landlord has also submitted several emails demanding rental payments for payments that were due and not received on the 1st of several months throughout the tenancy, including an email dated August 5, 2011 that states, in the final sentence, "A reminder your rent is due on the 1st of the month not the 2nd, 4th, 6th...ect ect."

In an email dated March 2, 2011 the tenant writes that her funds will be deposited on March 4, 2011 and that she will then deposit the rent into the landlord's account and she apologizes for the inconvenience. The landlord has provided copies of several email money transfers all dated from 2nd of several months and no later, usually, than the 8th of the month.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

From the documentary evidence submitted by the landlord and the absence of any corroboration from the tenant, I accept the landlord's position that rent was due on the 1st of each month. As the tenant still has possession of the rental unit and since today is January 31, 2012, I find the tenant is responsible for the payment of rent for January 2012.

As to the landlord's claim for lost rent for February 2012 and since rent is not yet due and the landlord may still be able to rent the unit for at least part of February to minimize any potential loss, I find the landlord's Application for lost rental income to premature and I dismiss this portion of the Application with leave to reapply.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$850.00** comprised of \$800.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the tenant's Application was specifically to dispute the notices to end tenancy and since she is no longer disputing the notices, I find that she is not entitled to recover the filing fee she paid. I dismiss this portion of the tenant's 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: January 31, 2012.

Residential Tenancy Branch