



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNDC, FF

Introduction

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

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

On November 29, 2011, a Dispute Resolution hearing was held. At that hearing the landlord was seeking an order of possession for unpaid rent and a monetary order. The months that were addressed at that hearing were September and October 2011.

At the hearing on November 29, 2011, the Dispute Resolution Officer found that the tenant was in arrears for rent in the amount of \$690.00 and granted the landlord a monetary order.

The Dispute Resolution Officer did not grant an order of possession as the Dispute Resolution Officer could not verify that the notice to end tenancy was in the proper form required by the Act and granted the landlord leave to re-apply.

In view of the fact the tenant was found to be in arrears for unpaid rent, the only issue that I must decide is whether the notice to end tenancy issued on October 9, 2011, is a valid notice under the Act, in order to grant the landlord an order of possession.

The landlord has applied for an additional monetary order for unpaid rent for November, December 2011 and January 2012 and the merits of that claim proceeded at today's hearing.

The tenant submitted late documentary evidence and the tenant did not provide the landlord with a copy of that evidence, therefore the late documentary evidence of the tenant will not be admitted for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or a portion of the security deposit?

Background and Evidence

The tenancy began on September 2, 2011. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The landlord testified he posted the notice to end tenancy for non-payment of rent on the door of the rental unit on October 9, 2011. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord testified the tenant has not paid any rent for November, or December 2011 and has not paid rent for January 2012.

The landlord further testified he recently received a cheque from social service for the amount of \$700.00 which should be deducted from the outstanding rent of \$3,000.00.

The tenant testified that she always had enough money to cover the rent at the beginning of each month as the Ministry of Social Services would send her a cheque and she would use part of her child tax credit to cover the balance needed for rent.

The tenant testified that she paid the landlord \$1,000.00 cash on November 23, 2011, for November rent and paid another \$1,000.00 on December 1, 2011, for December rent, and paid \$300.00 on January 1, 2012, towards January rent. The tenant changed her testimony during the hearing and said she paid December rent on November 23, 2011 and was confused when questioned about the payment that she alleged she made on December 1, 2011.

The tenant further testified that she hand wrote receipts for the payment and had the landlord sign those receipts.

The landlord argued that he has never signed any receipts for the tenant and would question the authenticity of those receipts if the tenant provides copies to him.

Analysis

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

I find that the tenant was served with a notice to end tenancy for non-payment of rent on October 9, 2011, the decision at the previous hearing determined that the tenant did not pay the outstanding rent and did not apply to dispute the Notice. I find the notice to end tenancy is a valid notice in accordance with the Act.

Therefore, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Based on the parties' evidence regarding payment of rent, I prefer the landlord's testimony over the tenant's testimony for the following reasons.

The tenant has not provided any proof that she paid the landlord rent, such as bank statements filed to show that she in fact had the money in her account as stated and that she withdrew money from her bank account to pay the landlord.

The evidence of the tenant was that she did not pay November rent until the 23rd of November 2011, if the tenant's evidence was correct that she always had rent money at the beginning of the month, why would she pay it three weeks late? Further, the tenant's evidence was not consistent regarding the payment of Decembers rent.

Therefore, I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$2,700.00 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,250.00.

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

Conclusion

The notice to end tenancy was a valid notice in accordance with the Act. The landlord is granted an order of possession. I order the landlord keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 05, 2012.

Residential Tenancy Branch