



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes OPR, MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. Cancel a notice to end tenancy for unpaid rent;
2. Make repairs to the unit for health or safety reason; and
3. Make repairs to the unit, site or property.

The landlord's application is seeking orders as follows:

1. Order of possession for unpaid rent;
2. A monetary order for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement; and
3. A monetary order for unpaid rent.

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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant and landlord indicated several matters of dispute on their applications for dispute resolution, the most urgent of which is the application to set aside the notice to end tenancy. I find that not all the claims on these applications for dispute resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the notice to end tenancy and the landlord's request for an order of possession for unpaid rent, and a monetary order for unpaid rent. The balances of the parties' applications are dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be set aside?

Is the landlord entitled to an order of possession for unpaid rent?

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

Background and Evidence

The tenancy commenced on November 8, 2011. Rent in the amount of \$1,800.00 was payable on the first day of each month. The parties agree that a security deposit of \$1,100.00 was payable. The tenant alleges the security deposit has been paid, the landlord denies the tenants paid a deposit.

The tenant was served with a notice to end tenancy for non-payment of rent on December 6, 2011, by posting the notice to the door of the rental unit. 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 tenant did dispute the notice within the required time.

The tenant testified on November 8, 2011, she paid the landlord \$1,000.00 towards November rent and on November 11, 2011, she paid the landlord a further \$800.00. Filed in evidence is a receipt for \$1,800.00.

The tenant testified when she moved into the rental unit the rent of \$1,800.00 was to cover from November 11, 2011, to December 11, 2011, and that is why the rent receipt shows rent paid for November and December, 2011. Filed in evidence is a copy of the receipt.

The tenant testified there was a discussion with the landlord as to the amount of rent due for the balance of December as the rental unit was in a mess when she moved in. The tenant states the landlord said the maximum he would credit the tenant for cleaning was \$200.00.

The tenant testified she paid the landlord \$1,100.00 on November 23, 2011, for the security deposit. A photo copy of a receipt has been submitted.

The written submission of the tenant states the "balance of December rent would be free". The tenant written submission further states "we did not have to pay a damage deposit except for \$200.00".

The tenant further stated that she had not paid any further rent to the landlord.

The landlord testified the rental unit was cleaned prior to the tenant moving into the rental unit and never agreed to give her any rent reduction for the month of December 2011.

The landlord states that term 27 of the tenancy agreement is initialled by the tenant showing that the accommodation was rented in good condition. Filed in evidence is a copy of the tenancy agreement. Filed in evidence is a receipt from a cleaning company dated prior to the commencement of the tenancy agreement.

The landlord's agent testified that the landlord did provide a receipt to the tenant for \$1,800.00 and wrote down the wrong information on that receipt.

The landlord's agent testified rent for November 2011, was prorated and the tenant paid \$1,380.00 and the balance of \$420.00 was applied to the tenant's security deposit.

The landlord's agent further testified that the tenant did not pay the security deposit and the tenant signed a promissory note in the amount \$1,100.00. The note indicates it would be paid on November 23, 2011. The landlord's agents acknowledge the balance owing on the security deposit is \$680.00 as the security deposit was credited with the \$420.00 paid by the tenant on November 11, 2011.

Analysis

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

I prefer the landlord's testimony over the tenants for the following reasons:

The evidence of the tenant was conflicting. The tenant's testimony was that there was an agreement to reduce rent for cleaning. However, the tenant has not paid the landlord any further rent. If the agreement was to reduce rent even at the maximum amount of \$200.00 as suggested by, the tenant made no effort to pay the landlord the balance of rent owed.

Further, the tenant's written submission indicates rent for the balance of December is free.

The tenancy agreement says rent is due on the first of the month. The only rent the tenant paid was in November, 2011. I find the rent payment in November 2011, was prorated as testified to above and for the month of November. I find the tenant has not paid rent for December 2011 and January 2012.

Therefore, as the tenant has failed to pay all rent due, 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.

As I have determined the tenant has not paid rent the landlord is entitled to a monetary order.

The tenant provided written submission that conflicts with her testimony regarding the payment of the security deposit and as the landlord is questioning the authenticity of the receipt the tenant alleges to have.

I order the tenant to provide the original receipt signed by the landlord for the security deposit. The tenant is to have that receipt submitted to the Residential Tenancy Branch no later than January 18, 2012.

I will reserve my decision as to the quantum of the monetary order to be issued until that time.

Conclusion

The tenant failed to pay rent for the month of December 2011 and January 2012.

The landlord is granted an order of possession. I have reserved my decision on the landlord's monetary order, pending evidence from the tenant.

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 13, 2012.

Residential Tenancy Branch