



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR and FF

This application was brought by the landlord on January 31, 2012 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by registered mail on January 20, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested.

Background and Evidence

While the landlord had no certain recollection of the date, the attending tenant stated that the tenancy began on December 15, 2005. The landlord said the rent is \$2,500 per month, but the tenant stated that rent is \$1,250 per month.

The tenant alleged an unusual arrangement between her and the landlord by which she would give the landlord a cheque for \$2,500 and he would return \$1,250 in cash. Then she cited a leaking roof, carpets that she and her co-tenant had replaced, and the assertion that the rental unit was overpriced, but the landlord stated that there was no agreement between the parties for a rent reduction or exchange of rent for work on the rental unit.

The tenant submitted a copy of her bank statement showing a cheque had been drawn on her account on October 3, 2011, and the landlord withdrew his claim for unpaid rent for October and neither party submitted any further evidence of payment or non-payment of rent.

Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

While I had initially believed that some rent had not been paid, and noting that the tenant had not made application to dispute the Notice to End Tenancy, I considered issuing an Order of Possession and the grounds of conclusive presumption under section 46(5) of the *Act*.

However, in reviewing the file, I note that the Notice to End Tenancy of January 20, 2012 cites only unpaid rent of \$2,500 due on October 1, 2011 and is silent on the November, December and January rent claimed in the application.

As the landlord conceded during the hearing that the October rent was not longer at issue, and as the Notice to End Tenancy of January 20, 2012 referred only to the October rent, I cannot issue an Order of Possession based on that notice.

Therefore, the request for an Order of Possession is dismissed without leave to reapply. If appropriate, the landlord may issue a new Notice to End Tenancy for unpaid rent and make a new application based on that notice.

With respect to the monetary claim, the landlord's application is dismissed with leave to reapply, with a reminder of the necessity of providing evidence to support the claim.

Conclusion

The request for an Order of Possession is dismissed without leave to reapply until the landlord issues a new Notice to End Tenancy.

The request for a Monetary Order is dismissed with leave to reapply.

In the meantime, the tenancy continues.

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: February 20, 2012.

Residential Tenancy Branch