



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord had applied for:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant had applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Both parties appeared and gave testimony during the conference call.

Preliminary Issue

The tenant's application included a request for payment of the tenant's filing fee. However, records indicate that the tenant did not pay any fee for filing. Accordingly, I find that this portion of the tenant's application must be dismissed.

Issues to be decided:

Is the landlord entitled to an order of possession and monetary compensation based on the Ten-Day Notice? Or should the Notice be cancelled as requested by the tenant?

Background and Evidence

Based on the testimony of the landlord, the background is as follows. The tenancy started on August 1, 2011 with current rent of \$1,500.00 per month and a \$750.00

security deposit held in trust for the tenant.

Submitted into evidence was a copy of the Ten-day Notice, a copy of the tenancy agreement, a copy of the tenant's application for tenancy and a copy of a returned cheque dated February 1, 2012. The tenant submitted a significant amount of evidence. The tenant's bank records showed that the tenant had withdrawn \$1,500.00 on January 31, 2012 and also confirmed that on February 1, 2012, a cheque issued to the landlord was returned NSF. Other evidence from the tenant included a copy of a written statement from a witness, and a medical report.

The landlord testified that the tenant failed to pay rent for the month of February 2012 as the tenant's post-dated cheque did not clear. The landlord testified that the landlord then issued a Ten Day Notice to End Tenancy for Unpaid Rent and served it on the tenant on February 2, 2012.

The landlord is seeking compensation of \$1,500.00 for rent owed and an Order of Possession based on the Notice.

The tenant testified that, after they discovered mould in the unit, they contacted the landlord and advised the landlord that the unit was not healthy. According to the tenant, the parties agreed to meet at a certain cafe, where the tenants both frequently could be found. The tenant testified that this meeting occurred on December 31, 2012 during which they discussed the tenant's concerns about mould and the end of the tenancy. The tenant testified that, although the landlord was already given a post-dated cheque to cover February rent, the landlord still insisted that the tenant pay \$1,500.00 for February rent in cash. The tenant stated that the landlord agreed to return the tenant's post dated cheques.

The tenant testified that the landlord was paid \$1,500.00 in cash on January 31, 2012, but did not bring the tenant's cheques as promised. The tenant testified that she did not ask the landlord for a receipt at the time, nor did the landlord offer a receipt for the rent payment. However, the tenant pointed out that her bank records in evidence showed a withdrawal of the funds in question on January 31, 2012. The landlord's witness, who worked at the cafe, confirmed that she observed the landlord and the tenant at the cafe and saw the tenant pay the landlord with \$100 bills. The witness did not recall the exact date that this alleged transaction occurred.

The landlord acknowledged that she had met with the tenant at the cafe, but stated that this was at the tenant's request and occurred on January 30, 2012, not on January 31. The landlord testified that the only thing discussed at the cafe was the tenant's concern about mould. The landlord testified that that she had never requested payment of

February rent in cash.

The landlord testified that she followed up on the mould issue raised on January 30, 2012 by the tenant and a few days later attended the rental unit with her contractor. The landlord testified that this contractor was witness to statements made by the tenant about rental arrears owed.

The landlord's witness testified that while he was in the unit investigating a mould issue on February 6, 2012, he witnessed the male tenant tell the landlord that the rent would be paid "later".

The landlord's agent stated that, when he served the Notice of Hearing to the tenants, this was done at the cafe, where both the tenants were apparently working and appeared to be in charge. The agent stated that he was informed by one of the tenants that they had no intention of paying the rental arrears. The landlord and the landlord's agent pointed out numerous inconsistencies in the tenant's testimony that they felt affected her credibility.

Analysis:

A substantial amount of testimony was given, some of which was not relevant nor material to the dispute before me. In this analysis, only the pertinent information will be regarded.

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that the evidence confirmed that the rent for February was due on February 1, 2012 and that the tenant's rent cheque, dated February 1, 2012, was returned NSF and that a Ten Day Notice to End Tenancy for Unpaid Rent was issued on February 2, 2012 citing unpaid rent of \$1,500.00..

I find that the tenant was not able to offer verification that they had made a cash payment on January 31, 2012 to satisfy February's rent. I find that the tenant's explanation of how and why this monetary exchange transpired as described was confusing and implausible.

Moreover, the tenant's version of events was disputed by the landlord who was able to prove that there was a returned cheque dated February 1, 2012. I find that the landlord's actions throughout were consistent with that testimony.

I therefore find that the Notice for unpaid rent was supported under section 46 of the Act and cannot be cancelled.

Accordingly, I find that the tenant owes the landlord compensation of \$1,500.00 plus the \$50.00 cost of filing the application for a total amount of \$1,550.00. I order that the landlord retain the tenant's \$750.00 security deposit in partial satisfaction of the claim, leaving a remainder of \$800.00 still owed to the landlord. . Based on the evidence of both parties, I also find that the landlord is entitled to an Order of Possession.

Conclusion

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.

I hereby grant the landlord a monetary order for \$800.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed in its entirety, 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: February 21, 2012.

Residential Tenancy Branch