



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act (the Act)*, regulation and/or tenancy agreement by failing to pay rent?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the Act?

Background and Evidence

At the outset of the hearing the Landlord confirmed he has regained possession of the unit when the Tenants vacated on February 15, 2012 after they received the 10 Day Notice on February 7, 2012. Therefore he is withdrawing his request for an Order of Possession.

The parties agreed they entered into a verbal tenancy agreement that began in March 2011. Rent was payable on the first of each month in the amount of \$850.00 and no security deposit was paid by the Tenants.

The Tenant alleged he had a verbal agreement with the Landlord that allowed them to pay their rent bi-weekly and not on the first. The Landlord confirmed they had that discussion but the Tenants never paid their rent on their bi-weekly pay periods and so he relied on their original agreement that rent was payable on the first.

The Landlord affirmed he had issued the Tenants a two month notice that was to take effect on February 29, 2012. He is aware the Tenants were entitled to one month's free rent after serving the Notice however they did not pay rent for January 2012 or February 2012.

The Tenant confirmed he did not pay rent for January 2012 and argued that was their free month's rent. He stated that they are of the opinion that they did not have to pay rent for February 2012 because they vacated the property after receiving the 10 Day eviction Notice.

The Tenant explained that he did not pay all of December 2011 rent either. He advised he received a letter from the Landlord, which he read into evidence that stated the Landlord was giving him the unpaid December 2011 rent as a Christmas gift so he did not have to pay that; and for the months of January 2012 and February 2012 they would owe \$850.00 for rent because one month would be free. The Tenant confirmed again that they did not pay the \$850.00 that was due for 2012.

The Landlord confirmed he wrote that letter and gave the Tenants a Christmas gift to cover their previous unpaid rent. They are seeking to recover the \$850.00 for the 2012 outstanding rent.

Analysis

The Landlord withdrew his request for an Order of Possession.

The Tenant has argued that the due date of rent was changed to match his bi-weekly pay periods; however the Landlord argued it was never paid that way and he relied on the original agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Tenant has the burden to prove the terms of his tenancy were changed to allow rent to be paid on his bi-weekly pay days. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Tenants' burden of proof.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Section 51 (1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1.1) stipulates that a tenant referred to in subsection (1) may withhold the amount authorized from ***the last month's rent*** and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord [My emphasis added].

The evidence supports the Tenants were issued a 2 Month Notice to End Tenancy which was effective February 29, 2012. Therefore, I find that in accordance with section 51(1.1) the February 2012 rent was the Tenant's compensation under section 51(1) as listed above, for the last month free rent.

The evidence further supports the Tenants did not pay rent for either January or February 2012. Therefore, I find the Tenants have failed to pay January 1, 2012 rent, which is a breach of section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

Based on the aforementioned I find the Landlord has met the burden of proof and I award him a monetary claim of **\$850.00** for unpaid rent.

The Landlord has been successful with his application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$900.00** (\$850.00 + \$50.00). This Order is legally binding and must be served upon the Tenants.

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: March 01, 2012.

Residential Tenancy Branch