



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, RR, OPR, OPB, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a Notice to End Tenancy for unpaid rent; repair orders; and, a rent reduction. The landlord applied for an Order of Possession for unpaid rent and breach of an agreement; and a Monetary Order for unpaid rent and a returned cheque charge. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

With respect to the tenant's application, the tenant claimed she personally served the landlord with her application and evidence in person on February 28, 2012 at approximately 1:00 p.m. at IKEA. The landlord denied that he met with the tenant or received hearing documents from the tenant as she claimed. The tenant stated that the rental unit has since been vacated and I determined it was no longer necessary to consider her request to cancel the Notice to End Tenancy or requests for repair orders. I also declined to hear the tenant's request for authorization to reduce rent payable as the tenancy has ended. Thus, I found I did not need to make a finding as to service of the tenant's hearing documents upon the landlord. The tenant was informed of her right to make an Application for Dispute Resolution to request a Monetary Order for damage or loss related to previous months if she wished to pursue that matter. The tenant was also informed that in making any future Application for Dispute Resolution she would need to provide full particulars, including evidence, of the damages or loss she may have suffered during the tenancy.

The landlord stated that this was the first time hearing the tenant has vacated the rental unit. As a precaution the landlord requested the landlord be provided an Order of Possession. The tenant did not object to the landlord being provided an Order of Possession.

The landlord's application and evidence was confirmed to be served upon the tenant and I proceeded to deal with the landlord's application only.

I noted that the written tenancy agreement submitted by the landlord is signed by only the female tenant. The landlord could not provide an explanation for lack of a signature on the tenancy agreement for the male respondent. I amended the application to name only the tenant that is a signatory to the tenancy agreement.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to unpaid rent for February and March 2012 and if so, what is the amount outstanding?
3. Has the landlord established an entitlement to recover a returned cheque charge from the tenant?

Background and Evidence

Starting December 1, 2011 the tenant and the landlord commenced a one-year fixed term tenancy for both suites in a house. The tenant paid a security deposit totalling \$1,250.00 and the monthly rent of \$2,500.00 was due on the 1st day of every month. The tenant did not pay rent for February 2012 when due and on February 22, 2012 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$2,500.00 was outstanding as of February 1, 2012 and has a stated effective date of March 1, 2012. Both parties agreed that the tenant had paid \$500.00 over two instalments of cash in early February 2012. Both parties agreed the tenant gave the landlord a cheque for \$2,000.00 on February 15, 2012 and that it was dishonoured.

The landlord is seeking to recover unpaid rent of \$2,000.00 for February 2012 and \$2,500.00 for March 2012. The landlord acknowledged he has commenced efforts to re-rent the unit but does not have prospective tenant as he did not know when the tenant would be vacating.

The landlord is also seeking \$30.00 for dishonoured cheque fees. The tenancy agreement does not contain a clause for returned cheques. The landlord did not provide a statement from his bank showing the cost of the returned cheque.

The tenant testified that she gave the landlord \$500.00 in cash on February 28, 2012 and \$2,000.00 in cash on March 2, 2012. Both times she claims she met the landlord at the IKEA store and handed over the cash. The landlord did not issue a receipt for the cash payments but the tenant was of the position that emails exchanged between the parties are evidence of the payments made to the landlord. The tenant submitted that

none of their cash payments during the tenancy have been recognized with a receipt. The landlord responded by stating that he has had an agent collect rent before and he was uncertain as to whether this agent was issuing receipts for cash payments. However, the landlord denied vehemently that he did not meet with the tenant on February 28, 2012 or March 2, 2012 at IKEA or received \$500.00 and \$2,000.00 from her on those dates.

The tenant explained that despite paying \$2,500.00 to the landlord between February 28, 2012 and March 2, 2012 she vacated the rental unit on March 10, 2012 because she felt embarrassed and harassed when an eviction service company came to the property.

Provided as evidence for this proceeding were copies of: the tenancy agreement; the 10 Day Notice; the dishonoured cheque of February 15, 2012; and, email communication between the parties in February 2012.

Analysis

As the tenant stated the rental unit has been vacated and did not object to the landlord's request for an Order of Possession I provide an Order of Possession to the landlord with this decision. In the event the tenant, or other occupants, have not vacated the rental unit, the landlord is provided an Order of Possession effective two (2) days after service.

Upon review of the emails exchanged between the parties, I find the emails are consistent with the undisputed testimony that \$500.00 was received from the tenant in early February 2012. However, the last email is dated February 27, 2012 and there are no subsequent emails to confirm payments of \$500.00 and \$2,000.00 on February 28, 2012 or March 2, 2012 as alleged by the tenant. Rather, I find the emails demonstrate that the parties were trying to come to an arrangement with respect to paying the rental arrears and that they could not reach a mutual agreement. Therefore, I find the email evidence does not support the tenant's assertion that she paid the landlord monies after February 27, 2012.

In this case, the landlord has met his burden to show the amount of rent payable under the tenancy agreement and that the tenant was put on notice of her failure to pay rent when due. Where a rent payment is in dispute the tenant bears the burden to show the payment was made. In this case, I find disputed verbal testimony insufficient to meet this burden. I further find it unlikely that a tenant that has just paid \$2,500.00 to the

landlord, as alleged by the tenant, would move out days later because she felt embarrassed by an eviction service company showing up at her door.

In light of the above, I find the landlord's version of events more likely than not and I grant the landlord's request to recover unpaid rent for February 2012 and March 2012 in the amount of \$4,500.00.

I deny the landlord's request for recovery of returned cheque fees as the landlord has not provided evidence as to the amount he was charged by his financial institution in support of his claim.

Although I found the landlord largely successful in this application I make no award for the filing fee as I found the landlord's failure to ensure or determine whether receipts for prior cash payments were issued has contributed somewhat to this dispute.

I authorize the landlord to retain the tenant's security deposit and offset it against a portion of the rent owed the landlord. I provide the landlord with a Monetary Order in the net amount of \$3,250.00 to serve upon the tenant and enforce as necessary.

Conclusion

The landlord is provided an Order of Possession effective two (2) of service. The landlord is authorized to retain the security deposit. The landlord is provided a Monetary Order for the balance owed of \$3,250.00 to serve upon the tenant and enforce as necessary.

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 14, 2012.

Residential Tenancy Branch