



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

Tenants' application: MT; CNR; MNDC; FF

Landlord's application: OPR; MNR; FF

Introduction

This matter was convened to consider cross applications. The Tenants' applied for more time to file an application to cancel a Notice to End Tenancy for Unpaid Rent issued February 21, 2012 (the "Notice"); to cancel the Notice; for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Landlord applied for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenants.

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.

The Tenant testified that she amended her application on March 1, 2012, and that her agent served the Landlord with the Notice of Hearing documents and evidence, by handing the documents to an agent of the Landlord on March 7, 2012, at 12:00 noon. The Tenant provided a copy of her agent's statement of service in evidence. The Landlord's agents acknowledged receipt of the documents.

The Landlord's agent NB testified that the Tenant AY was served with the Landlord's Notice of Hearing documents and copies of its documentary evidence by handing the documents to the Tenant on March 7, 2012. The Tenant acknowledged receipt of the documents.

Preliminary Matter

The Tenants have applied to be allowed more time to make their application to cancel the Notice. Section 46(4) of the Act requires a tenant to make application to dispute a notice to end tenancy for unpaid rent "within 5 days after receiving a notice".

The Landlord's agent NB testified that the Tenants were served with the Notice by posting it to the Tenants' door on February 21, 2012. Section 90 of the Act deems service in this manner to be effected 3 days after posting the Notice. Therefore, I find that the Tenants were served with the Notice on February 24, 2011.

The Tenants filed their Application for Dispute Resolution on February 29, 2012, and therefore I find that they filed their Application within the 5 days required by Section 46(4) of the Act. Therefore, this portion of the Tenants' application is dismissed as such an application is not required.

The Hearing continued with respect to the balance of the parties' applications.

Issues to be Decided

- Should the Notice be upheld or canceled?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to the monetary award pursuant to the provisions of Section 67 of the Act?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that, contrary to the terms of the tenancy agreement, rent is due on the 15th day of each month.

The parties agreed that monthly rent is paid in cash and that receipts are provided. They also agreed that the Landlord collects the rent from the Tenants at the rental unit.

The Landlord's agent NB testified that the Tenants owe \$1,085.00 in unpaid rent from September, 2011. The Landlord provided a Tenant Ledger in support of the Landlord's claim which shows payments made from July, 2011 to February, 2012.

The Tenant testified that the Tenants owe no money to the Landlord. She stated that there have been several dispute resolution proceedings with respect to this tenancy and that the Landlord has not provided a copy of a Tenant Ledger until this Hearing. The Tenant testified that she had not seen the Ledger until she was provided copies of the Landlord's documentary evidence after 9:00 p.m. on March 7, 2012. She stated that she had proof in the form of receipts that rent has been paid in full.

I adjourned the Hearing to allow the Tenant to provide the Residential Tenancy Branch and the Landlord with copies of the rent receipts for the months of July, 2011, through to January, 2012, inclusive. Copies of receipts for February, 2012, have already been provided by both parties.

I advised the parties that the matter would reconvene on March 27, 2012, at 11:00 a.m. and provided the parties with the necessary dial-in codes. I also advised them that they would receive Notices of Adjourned Hearing in the mail. Neither party is required to serve the other with copies of the Notice of Adjourned Hearing.

Conclusion

This matter will reconvene at 11:00 a.m. on March 27, 2012. The Residential Tenancy Branch will send copies of Notices of Adjourned Hearing to both parties under separate cover. Neither party is required to serve the other with copies of the Notice of Adjourned Hearing.

This interim 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 16, 2012.

Residential Tenancy Branch