



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF
 CNC CNR FF

Introduction

This hearing dealt with Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking Orders to have a Notice to End Tenancy for cause and a Notice to End Tenancy for unpaid rent cancelled and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 29, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the Landlord's submissions I find the Tenant was sufficiently served Notice of this proceeding in accordance with the *Residential Tenancy Act*.

The parties appeared at the teleconference hearing 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 a valid 10 Day Notice to End Tenancy (10 Day Notice) been issued and served to the Tenant in accordance with sections 46 and 52 of the *Residential Tenancy Act* (The Act)?

2. Has a valid 1 Month Notice to End Tenancy (1 Month Notice) been issued and served to the Tenant in accordance with sections 47 and 52 of the Act?
3. Has the Landlord met the burden of proof to end this tenancy in accordance with either Notice to be awarded an Order of Possession in accordance with section 55 of the Act?
4. Has the Landlord met the burden of proof to be awarded a Monetary Order in accordance with section 67 of the Act?

Background and Evidence

At the outset of the hearing a male appeared and affirmed that he was the respondent Tenant. Then after I clarified who else was in the room it was determined that the person who took the affirmation was not the respondent Tenant; rather he was the Tenant's Agent/Translator. The Agent / Translator was re-affirmed using his correct identity and he was warned that if he attempted to misrepresent the Tenant during this proceeding his creditability would be negatively affected.

The Tenant and his Agent affirmed that they did not serve the Landlord with copies of the Tenant's application or the Tenant's evidence.

The Landlord affirmed that they entered into a written tenancy agreement that began on February 15, 2010 for the monthly rent of \$1,150.00 which was payable on the 15th of the month with all utilities included; however when the Tenant continued to use a large amount of electricity the Landlord approached him and they agreed that the Tenant would pay for the electricity used.

The Tenant argued that utilities were always included in the rent and about six months ago the Landlord approached him about the cost of electricity and they agreed that he would pay \$1,200.00 per month which would include \$50.00 for utilities.

The Landlord confirmed he issued a 10 Day Notice for unpaid rent and utilities which was posted to the Tenant's door on March 17, 2012. He argued that the Tenant was always late in paying his rent. He advised that February 2012 rent was paid at the end of the month and he could not confirm which date the cheque was deposited into his account as he did not have his bank records available. He stated he knows that March 2012 rent remains unpaid as does the rest of the electricity bill that was due in February 2012. He confirmed receiving \$50.00 as payment towards the electricity bill in February when he received a \$1,200.00 payment at the end of February 2012 which included rent of \$1,150.00 plus \$50.00 electricity.

The Tenant and his Agent argue they have a copy of a cheque which was cashed by the Landlord proving rent and electricity was paid for March 2012 early on March 7, 2012 for \$1,200.00.

Analysis

Tenant's Application.

The evidence supports the Tenant did not serve the Landlord with copies of his application and hearing documents which is a breach of Section 89 of the *Residential Tenancy Act* and section 3.1 of the *Residential Tenancy Branch Rules of Procedure*.

The Tenant confirmed that they did not provide the Landlord with copies of their evidence in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Respondent Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

To find in favour of an application I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Tenant's application.

As the Tenant has not been successful with his application, I find he must bear the burden of the cost to file his application.

Landlord's Application

I have carefully considered the aforementioned and the documentary evidence submitted by the Landlord which included, among other things, copies of the 10 Day Notice and the tenancy agreement.

The tenancy agreement clearly shows that rent is \$1,150.00 due on the first of each month and that water, electricity, heat, stove and oven, refrigerator, carpets, window coverings, laundry, and garbage collection, were all included in the monthly rent. However, the Landlord's testimony indicates electricity was later to be paid by the Tenant based on the actual bill while the Tenant argued he agreed to pay an additional

\$50.00 per month for electricity and they both agreed rent was payable on the 15th of each month.

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 Landlord has the burden to prove that the tenancy agreement was changed in accordance with the Act; to exclude electricity and that the Tenant agreed to pay the full cost of the bill. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof. Therefore I dismiss the Landlord's claim for utilities.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice for unpaid rent.

I accept the Landlord's evidence that the Tenant has failed to pay the March 15, 2012 rent in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$1,150.00** for March 15, 2012 rent.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

Based on the aforementioned, and having found the 10 Day Notice to be issued in accordance with the Act, I hereby approve the Landlord's request for an Order of Possession.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

There was no testimony or evidence provided in relation to a 1 Month Notice. Therefore no findings of fact or law have been made pertaining to a 1 Month Notice to end tenancy.

The Tenant's application is HEREBY DISMISSED.

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$1,200.00 (\$1,150.00 + \$50.00 filing fee)**. This Order is legally binding and must be served upon the Tenant.

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: April 11, 2012.

Residential Tenancy Branch