



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:10 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at approximately 7:00 p.m. on April 14, 2012. The landlord testified that his office sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on May 2, 2012. He provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on July 1, 2010. At the expiration of the initial term, this tenancy converted to a periodic tenancy. Monthly rent

is set at \$775.00, payable in advance on the first of each month. The landlord continues to hold a \$387.50 security deposit paid on June 15, 2010.

The landlord's 10 Day Notice identified \$425.00 in rent owing as of April 14, 2012 for April 2012. The landlord's application for a monetary award of \$1,200.00 included the \$425.00 in outstanding rent from April 2012 and unpaid rent of \$775.00 for May 2012.

At the commencement of the hearing, the landlord gave sworn testimony that the tenant has made a number of payments towards his outstanding rent since the landlord applied for dispute resolution. The landlord said that the tenant made two Interac payments which paid for the remainder of the tenant's April 2012 rent previously owing. Although he did not have details on when these payments were made or the amounts of these payments, he testified that receipts were issued to the tenant for "April 2012 rent." The landlord also testified that the tenant has made two rent payments for May 2012, although \$375.00 remains owing for the tenant's May 2012 rent. Again, the landlord did not have specific dates when these Interac payments were received, but believed that \$150.00 was received sometime in the week before this hearing and approximately \$300.00 was received prior to the most recent payment. The landlord testified that receipts were issued for May 2012 rent.

The landlord noted that the tenant is making a genuine effort to pay his outstanding rent and that they landlord may not need to make use of any Order of Possession issued as a result of the landlord's application. The landlord requested an Order of Possession to be used only if the tenant does not pay the remainder of his May 2012 rent and his June 2012 rent on time when it becomes due.

Analysis

Although the tenant neither paid the outstanding rent in full nor applied for dispute resolution within five days of being deemed to have received the 10 Day Notice, he kept paying rent to the landlord. The landlord's acceptance of these payments from the tenant for rent was not consistent with the landlord's 10 Day Notice. On the basis of the landlord's sworn testimony, I find that the landlord's acceptance of a series of rental payments from the tenant after the landlord issued the 10 Day Notice and issuance of receipts for rent continued this tenancy. By accepting these continuing rental payments for April and May 2012, I find that the landlord's 10 Day Notice is of no effect and the tenancy continues. For these reasons, I dismiss the landlord's application to end this tenancy based on the 10 Day Notice without leave to reapply. Similarly, I dismiss the landlord's application for an Order of Possession without leave to reapply.

Turning to the landlord's application for a monetary award, I find the landlord's evidence lacked details that would entitle the landlord to a monetary award for unpaid rent. The landlord did not have specific details regarding when payments were received and in what amounts. Although the landlord was certain that there was \$375.00 still owing from May 2012, he did not supply any written evidence in the form of a tenant ledger or rent receipts. He testified that he did not have details with him regarding the rent payments received from the tenant since the 10 Day Notice was issued. As I find that the landlord's application for a monetary award has not demonstrated sufficient entitlement to a monetary award for unpaid rent, I dismiss the landlord's application for a monetary award for unpaid rent owing from April and May 2012 without leave to reapply.

As the landlord has been unsuccessful in this application, the landlord bears the responsibility for the filing fee for this application.

Conclusion

I dismiss the landlord's application 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: May 23, 2012

Residential Tenancy Branch