



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 was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The named landlord attended the conference call hearing on behalf of both landlords, gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch but not to the tenant and is therefore not considered in this Decision. The tenant attended the hearing and gave affirmed testimony and the parties were given the opportunity to cross examine each other. The testimony of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

This month-to-month tenancy began on September 1, 2010. The rental is a pad in a manufactured home park and the tenant owns the manufactured home. Rent in the amount of \$310.00 per month is payable in advance on the 1st day of each month.

The landlord testified that the tenant is in arrears of rent the sum of \$1,240.00 for the months of March, April and May, 2012. The landlord then testified that the tenant is in arrears \$930.00. The landlord further testified that the tenant paid rent in the amount of \$310.00 on March 1, and the tenant is in arrears of rent \$620.00 for April and May, 2012. The landlord received 5 NSF cheques from the tenant. The cheques were dated January 1, 2012, April 1, 2012, April 1, 2011 and October 1, 2011. Once the landlord counted, the landlord testified that 4 cheques from the tenant have been returned NSF, although the landlord has not yet attempted to cash the tenant's cheque for May, 2012.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice was dated on April 16, 2012 and was served on the tenant personally on April 19, 2012.

The tenant agreed that the notice to end tenancy was served personally on April 19, 2012, and the tenant contacted the landlord the day before and again after the notice to end tenancy was issued and offered to send to the landlord by email banking the 2 months of arrears plus 4 months in advance.

The tenant further testified that the landlord implied that the rent cheque for May was returned NSF but it wasn't; the landlord did not even attempt to cash it.

The tenant also testified that at the outset of the tenancy the landlord told the tenant that if payday fell after the 1st of the month, the landlord would keep the post-dated cheque for rent until payday. Then in October, 2011 when the parties spoke about it, the landlord insisted on depositing the cheque before payday and the tenant's bank account was charged about \$45.00, although no evidence of that was provided.

Analysis

Firstly, the *Manufactured Home Park Tenancy Act* states that a tenant must pay rent when it is due. If the tenant fails to do so, the landlord may issue a notice to end tenancy in the approved form on any day after the day rent is due. The tenant then has 5 days to pay the rent in full, in which case the notice is of no effect, or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant is served, or deemed served with the notice.

In this case, I find that the tenant was served with a notice to end tenancy on April 19, 2012. However, I do not have the benefit of a copy of the notice that the tenant was served with, and therefore, I cannot be satisfied that the notice is in the approved form.

Further, the landlord had great difficulty in testifying as to the amount of rent due from the tenant. The testimony changed several times during the hearing, and I am not satisfied of the amount that may have been written on the notice to end tenancy or its accuracy. In order to be successful in receiving an Order of Possession and a monetary order, the landlord must be prepared to provide evidence and accurate testimony, and provide a copy of all evidence that the landlord intends to rely on to the tenant in accordance with the *Act* and the Rules of Procedure.

The landlord is at liberty to issue another notice to end tenancy if rent remains unpaid, however, the landlord's application for an Order of Possession and a monetary order with respect to the notice to end tenancy received by the tenant on April 19, 2012 is hereby dismissed without leave to reapply.

Since the landlord has not been successful with the claim, the landlord is not entitled to recovery of the filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed 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 *Manufactured Home Park Tenancy Act*.

Dated: May 18, 2012.

Residential Tenancy Branch