



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 MT DRI CNR MNDC FF

Preliminary Issues

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request for more time to make her application and to set aside, or cancel the Landlord's Notice to End Tenancy for unpaid rent, and I dismiss the balance of the Tenant's claim with leave to re-apply.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep the security and or pet deposit, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for their application.

The Tenant filed seeking an Order to allow more time to make her application to dispute the Notice to end tenancy, to obtain an Order to cancel a Notice to end tenancy for unpaid rent, and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. 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. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Is the Tenant entitled to an Order to allow more time to dispute a Notice to end tenancy?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on December 16, 2011 and is set to end on November 30, 2012. Rent is payable on the first of each month in the amount of \$925.00 and on December 7, 2011 the Tenants paid \$463.00 as the security deposit.

The Landlord stated that when July 1, 2012 rent remained unpaid he issued a 10 Day Notice for \$970.00 which included the \$25.00 late payment fee and posted this notice through the Tenants' door on July 4, 2012 at 9:00 a.m. He later learned that he should not include the late payment fee in the amount listed as unpaid rent so he issued a second 10 Day Notice for \$925.00 + \$25.00 late fee and posted it to through the Tenants' door on July 4, 2012 at 2:00 p.m. The Landlord confirmed that he attempted to contact the Tenant between July 4th and July 13, 2012 however there was never any answer to his calls.

The Landlord stated that he was at the rental office on Friday July 13, 2012 as late as 5:00 p.m. and the Tenant's payment had not been received. When he returned to the rental office on Monday July 16, 2012 at 8:30 a.m. he found the Tenant's payment and issued her a receipt for use and occupancy only.

The Tenant confirmed receipt of the two 10 Day Notices and initially stated she received them on July 8, 2012 when she returned home after being absent for a few days. Later in her testimony the Tenant stated she did not return home until July 10, 2012.

I asked the Tenant why she waited so long before filing her application for dispute resolution and she stated she made her application for dispute resolution after she received the hearing documents pertaining to the Landlord's application for dispute

resolution. I then asked why she waited to pay her rent until July 16, 2012, and she said she has proof that her rent cheque was issued July 11, 2012 not July 16, 2012. I asked why she did not provide copies of the rent payment into her evidence and she stated she did not know to provide it along with the other evidence she submitted.

The Tenant asserted that she paid her July 2012 rent on July 11, 2012 by personally delivering the rent to the Landlord. She argued that the Landlord refused to give her a receipt on July 11, 2012 and that she later received the receipt dated July 16, 2012.

The Landlord advised that rent for August 1, 2012 has not been paid so he is seeking an Order of Possession effective August 31, 2012 and a Monetary Order for the August rent and late payment fees as the Tenant is still residing in the rental unit.

The Tenant confirmed that she has not paid the August 1, 2012 rent and she is still occupying the rental unit.

Analysis

Landlord's application

Order of Possession – When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends on the tenth day.

In this case I accept the Tenant's initial testimony that she did not receive the 10 Day Notices until she returned home on July 8, 2012. In the absence of evidence to the contrary, I accept the Landlord's testimony and the Tenant's evidence of a receipt dated July 16, 2012 is proof that payment of rent was provided on July 16, 2012. The Tenant did not file her application for dispute resolution until July 19, 2012.

Based on the foregoing, I find the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **July 18, 2012**, (10 Days after she received the Notice on July 8, 2012) and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession effective August 31, 2012.

Claim for unpaid rent - The Landlord claimed unpaid rent of \$945.00 that was due July 1, 2012. In this case the Tenant paid the rent in full by July 16, 2012, however the payment was not received until after the fifth day and a receipt was issued for "use and occupancy only"; therefore the tenancy was not reinstated.

Based on the aforementioned, I find the Landlord's claim for July 2012 unpaid rent to be fully satisfied by the Tenant and no monetary award is warranted for July 2012.

August 2012 Use & Occupancy – As noted above this tenancy ended **July 18, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for August 2012.

The Landlord will not regain possession of the unit until August 31, 2012; therefore I award the Landlord **\$945.00** for use and occupancy of the unit up to **August 31, 2012**.

Late Payment Fees - The evidence supports that #10 of the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00 when rent is not paid on the first of each month. This is also in accordance with section 7 of the Residential Tenancy Regulation.

The Landlord has applied for late payment fees for July and August 2012 however this tenancy ended July 18, 2012 in accordance with the 10 Day Notice. The tenancy agreement is no longer in effect after the tenancy ends therefore the Landlord is not entitled to late payment charges for occupancy after the end of the tenancy. Accordingly I award the Landlord late payment charges for July 2012 in the amount of **\$25.00** and dismiss his claim for August 2012 late payment charges.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use and Occupancy for August 2012	945.00
July 2012 Late payment fee	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,020.00
LESS: Security Deposit \$463.00 + Interest 0.00	<u>-463.00</u>
Offset amount due to the Landlord	<u>\$ 557.00</u>

Tenant's application

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the Tenant on why she did not apply within the prescribed timeframes does not constitute exceptional circumstances and so I find that I cannot accept her application to cancel the notice to end tenancy.

As I have found this tenancy to have ended in accordance the 10 Day Notice I find the rest of the Tenant's application to be moot. Accordingly, the Tenant must bear the cost of filing this application.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **August 31, 2012 at 1:00 p.m.** This Order is legally binding and must be served upon the Tenants.

The Landlord has been issued a Monetary Order in the amount of **\$557.00**. This Order is legally binding and must be served upon the Tenants.

I decline to accept the Tenant's application as it was not filed within the specified timeframe.

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: August 08, 2012.

Residential Tenancy Branch