



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, MNDC, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim. The tenant applied to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that he had not received the notice of hearing from the landlord. The landlord stated that she mailed it to him by registered mail and filed a copy of the tracking slip.

The rental unit consists of a room in an inn and the tenancy agreement indicates that the agreement falls under the jurisdiction of the *Hotel Inn Keepers Act*. The issue of jurisdiction was addressed in a proceeding that took place on July 24, 2012 and it was determined that this matter falls under the jurisdiction of the *Residential Tenancy Act*.

Issues to be decided

Has the landlord issued a valid notice to end tenancy? Is the landlord entitled to an order of possession or should the notice be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on June 26, 2012. The monthly rent was \$880.00 plus tax which works out to be \$1003.20. The tenant paid a security deposit of \$150.00.

The landlord testified that the tenant moved in on June 29, 2012 and paid \$570.00. On July 01, 2012, he failed to pay the balance of \$573.20 that was owed for July. On July 25, 2012, the landlord served the tenant with a notice to end tenancy for unpaid rent in the amount of \$573.00. The tenant failed to pay rent but filed an application to dispute the notice.

The tenant stated that on July 30, 2012, he attempted to pay \$400.00 to the landlord but she refused to accept it. The tenant filed a statement from a witness who accompanied him that day, to confirm that the landlord refused to accept rent from the tenant. The tenant agreed that he did not make any further payments towards rent but stated that he did not do so because the landlord would not accept rent.

The landlord denied having refused rent from the tenant. She stated that the tenant did not pay or attempt to pay rent.

The landlord has applied for an order of possession effective two days after service on the tenant and for a monetary order for outstanding rent in the amount of \$573.00 for July plus \$1,003.20 for August. The landlord has also applied for the recovery of the filing fee.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

In this case the tenant did not pay outstanding rent as of the date of this hearing on August 17, 2012. Even if I accept the tenant's testimony that the landlord refused rent, I find that the tenant was offering \$400.00 which would still not be enough to cover the amount of the outstanding rent.

Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$1,576.20 for unpaid rent. Since the landlord has proven her case she is also entitled to the filing fee of \$50.00.

I order that the landlord retain the security deposit of \$150.00 in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$1,476.20**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld. I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$1,476.20**.

The tenant's application is dismissed in its entirety.

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 17, 2012.

Residential Tenancy Branch