



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 her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Issues – Service of Documents

The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on July 7, 2012. Initially, the tenant said that he received this Notice. In doing so, he gave sworn testimony that the landlord did post "something" on his door, but he could not recall what it was. Later in the hearing, the tenant testified that the only copy of the 10 Day Notice he received was one that was included with the landlord's dispute resolution hearing package.

The landlord testified that she sent a copy of her dispute resolution hearing package to the tenant by registered mail "a couple of days" after she filed her application for dispute resolution with the Residential Tenancy Branch (RTB) which occurred on Monday, July 23, 2012. She was unable to provide a specific date when she sent the hearing package and did not have a Canada Post Tracking Number to confirm her registered mailing. She testified that she remembered sending this hearing package by registered mail on a Monday, and within the 3 day time limit established to send her hearing package to the tenant. The RTB did not produce the Notice of a Dispute Resolution Hearing until Tuesday, July 24, 2012. Given this evidence, I question the accuracy of the landlord's oral testimony with respect to when she sent her hearing package to the tenant by registered mail. However, the tenant testified that he did receive the

landlord's dispute resolution hearing package on Thursday, August 16, 2012. He said that he was initially unable to obtain that registered mail because he did not have proper identification to sign for receipt of the package. He said that he was only able to obtain the package when someone else assisted him to provide the necessary identification.

Although the landlord has provided little evidence to document the specifics of her registered mailing of her dispute resolution hearing package to the tenant, I am satisfied that the tenant did eventually receive this hearing package in sufficient time to participate in this hearing of the tenant's application. The landlord cannot be held responsible for the tenant's inability to obtain a copy of registered mail sent to him at the correct mailing address due to the tenant's identification problems. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed to have been served notice of the landlord's application for dispute resolution by registered mail in sufficient time to enable the tenant to participate in this hearing.

The contents of the landlord's dispute resolution hearing package were also in dispute. The tenant testified that he only received three pages of documents in this package, which was the only written evidence he received from the landlord. At the hearing, the tenant reviewed the contents of the three pages. These included the Notice of a Dispute Resolution Hearing as well as general RTB documents provided to respondents with respect to the hearing process. The landlord testified that she sent a full copy of her 12-pages of written evidence to the tenant. However, she did not provide details as to how and when she provided this written evidence to the tenant. As she made no reference in her testimony to any subsequent delivery of evidence to the tenant, I assume that she provided this information as part of her dispute resolution hearing package. Most of her written evidence was copies of notes and letters provided by the tenant during this tenancy explaining his ongoing financial challenges in paying his rent. The landlord also provided a copy of two NSF cheques issued by the tenant in February and May 2012. On August 9, 2012, the RTB received a 14-page fax from the landlord, the apparent written evidence package she provided to the tenant.

Since most of the documents entered into written evidence by the landlord were letters and notes from the tenant, I find that the tenant was likely aware of these documents in advance of this hearing. However, there are significant inconsistencies in the oral testimony of both parties that raise questions as to what was actually provided to the tenant by the landlord in advance of this hearing. For example, the tenant changed his testimony during the hearing to state that he never received the landlord's 10 Day Notice until recently, apparently as part of the landlord's dispute resolution hearing package received by him on August 16, 2012. However, he also testified that he only received three pages of documents in the landlord's hearing package, and did not

identify the 10 Day Notice as one of those documents. The landlord claimed to have sent her dispute resolution hearing package by registered mail within the 3-day deadline for doing so, but stated that she sent this on a Monday. Her reference to a 12-page written evidence package also differed from the 14-page written evidence package received by fax from her by the RTB on August 9, 2012.

Although the service issues relating to this hearing are very confusing and inconsistent, I find on a balance of probabilities that it is more likely than not that the tenant did receive the landlord's 10 Day Notice posted on his door on July 7, 2012. In coming to this determination, I rely on the inconsistencies in the tenant's sworn testimony. I find that the item the tenant initially admitted was posted on his door was more than likely the landlord's 10 Day Notice. The tenant's subsequent claim that the only documents he received from the landlord was her 3-page dispute resolution package is also at odds with his admission that he did not receive the 10 Day Notice until very recently. Pursuant to sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on the third day after its posting, July 10, 2012.

The landlord did not provide details to contradict the tenant's claim that she did not serve him with her written evidence. I am not satisfied that the landlord has properly served the tenant with her written evidence package. For that reason, I have not taken into account her written evidence.

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 periodic tenancy commenced on January 26, 2012. Monthly rent is set at \$500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$250.00 security deposit.

The landlord's 10 Day Notice identified \$1,290.00 in rent then owing. On the 10 Day Notice, the landlord noted that \$790.00 of this amount was due from February 2012 until June 2012, and the remaining \$500.00 was due on July 1, 2012. The landlord's July 23, 2012 application for dispute resolution requested a monetary award of \$1,790.00 for unpaid rent. In the Details of the Dispute in her application, the landlord described her claim in the following terms:

Since he moved in he is not paying me rent on time. So he owes me \$1290 rent in total. July & Aug Rent all together (\$1790) in total...

Both parties agreed that the tenant has been frequently late in paying his rent. They also agreed that the landlord has not issued written receipts for the tenant's rent payments during this tenancy. The only receipts issued were apparently prepared by the tenant and sometimes co-signed by the landlord, to reflect his payments and occasionally the amount owing. The landlord did not dispute the tenant's sworn testimony that he paid some of his rent by placing money into her mailbox slot which would drop into her exclusive portion of the building.

The tenant testified that the nature of his work leads to periods in the summer months when he has little income available. He said that as of mid-August 2012 his work has increased and he has now been making payments towards his outstanding rent which have been accepted by the landlord. He testified that he paid the landlord \$150.00 on August 14, 2012, \$50.00 on August 15, 2012, \$50.00 on August 16, 2012, and would have another \$50.00 to \$100.00 available later on the day of the hearing. He expressed his intent to pay all of the outstanding rent that he believes is owing to the landlord, but needed more time to do so. He said that he is intending to seek alternate accommodations by the end of September 2012 and asked to be allowed to remain in the rental unit until then while he makes his periodic rent payments.

The landlord provided no rent ledger, but did claim that the tenant is far behind in his rent and had not paid all of his rent for July or August 2012. She said that some of the tenant's cheques have been returned as N.S.F. She also disputed the tenant's claim that he has paid \$250.00 towards his rent since August 14, 2012. She testified that the actual amount she has received from the tenant over this period is \$200.00.

Analysis

The tenant has admitted that he failed to pay the \$1,290.00 identified as owing in the landlord's 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by July 20, 2012.

However, based on the evidence before me, I find that the landlord has been accepting the tenant's ongoing payments towards his rent since she issued the 10 Day Notice. I find that the landlord accepted the tenant's payments for rent. She did not issue receipts for these payments, which she is required to do. The landlord failed to note

that her acceptance of these payments for “use and occupancy only” was not intended to continue this tenancy. Under the circumstances, I find that the landlord’s ongoing behaviour did not lead the tenant to believe that his tenancy ended on July 20, 2012, and that the landlord intended to pursue an Order of Possession to enforce the 10 Day Notice she posted on his door in early July 2012. I find that the landlord has continued this tenancy. For these reasons, I dismiss the landlord’s application to end this tenancy on the basis of the 10 Day Notice without leave to reapply and dismiss her application for an Order of Possession.

Turning to the landlord’s claim for a monetary award, I find the landlord’s application lacking in details that would enable her to obtain the amount she is seeking. The landlord’s haphazard and incomplete record of the rent owing and rent received has led to considerable confusion for both parties as to what actually remains owing at this stage. The landlord bears the burden of demonstrating her entitlement to a monetary award for unpaid rent. She also bears responsibility for allowing the tenant to pay rent by cash payments dropped into her mailbox without issuing receipts. Her apparent reliance on receipts prepared by the tenant and now questioned by her also reduces her eligibility to the monetary award she is seeking. Her failure to provide a meaningful and understandable tenant ledger or record of payments also lessens her eligibility to a monetary award. Although I gave the landlord repeated opportunities to enter sworn oral testimony with respect to her claim for a monetary award, her oral testimony was limited to her request for an Order of Possession. During the hearing, she provided little oral testimony to support her claim for a monetary award of \$1,790.00.

Despite the serious limitations in the landlord’s evidence, the tenant did not dispute the landlord’s claim that he is far behind in his rent. Although neither party seemed certain as to the exact amount owing, the tenant testified that between \$30.00 and \$150.00 was owing before July 1, 2012. In this case, I find the tenant’s estimate of \$150.00 owing as of June 30, 2012 is likely the more realistic of the amount owing at that time. To this amount, \$500.00 became owing on July 1, 2012 and a further \$500.00 on August 1, 2012. In the absence of receipts from the landlord, I accept the tenant’s sworn testimony that he has paid \$250.00 in three rent payments from August 14, 2012 to August 16, 2012. Based on these calculations, the tenant admitted that he owed \$900.00 in rent as of the date of this hearing.

On the basis of the evidence before me, I find that the landlord is entitled to a monetary award of \$900.00 for unpaid rent owing as of August 20, 2012, the date of this hearing. This is the undisputed amount of outstanding rent as of that date.

In partial satisfaction of the monetary award issued in the landlord's favour, I allow the landlord to retain the tenant's \$250.00 security deposit plus applicable interest. No interest is payable over this period. As the landlord has been partially successful in this application, I allow her to recover \$25.00 of her filing fee from the tenant.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession on the basis of the 10 Day Notice without leave to reapply. This tenancy continues.

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent owing as of August 20, 2012 and part of the landlord's filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent as of June 30, 2012	\$150.00
Unpaid July 2012 Rent	500.00
Unpaid August 2012 Rent	500.00
Less Security Deposit	-250.00
Partial Recovery of Filing Fee	25.00
Total Monetary Order	\$925.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 21, 2012

Residential Tenancy Branch