



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issue to be decided

Is the landlord entitled to an order of possession for unpaid rent and compensation for rental arrears? or

Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in November 2009 with rent originally set at \$650.00 per month payable on the 1st day of each month and a security deposit of \$325.00 was credited to the tenant.

The original agreement was for a one-year fixed term. However, because the tenancy continued, the agreement was deemed under the Act to have transformed to a month-to-month tenancy. On March 1, 2012, the parties signed a second tenancy agreement

in which the rent was stated to be \$770.00. A copy of the tenancy agreement was in evidence.

Evidence submitted included a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated July 23, 2012, indicating that the tenant was in arrears for rent. The landlord testified that, as of May 31, 2012, the tenant had accrued rental arrears of \$2,405.70 from the past and submitted a copy of the tenant's ledger to confirm this debt. The landlord testified that the tenant had accrued further rental arrears since May 31 and during that period the tenant only made partial payments, the last one being \$300.00 received in July 2012.

The tenant did not dispute that he was in arrears for rent owed and stated that he was intending to clear up the debt once he established his income. The tenant stated that he had serious health problems and was hoping to remain living in the unit while he caught up on all of the outstanding rent owed.

The landlord was not receptive to this suggestion.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. The only factor to consider is whether the Notice was supported under the Act by the fact that the tenant owed rent. If so, the landlord's application for an Order of Possession and a Monetary Order will succeed. If not, the tenant's request that the Notice be cancelled will succeed.

I find that the correct monthly rental rate to be charged under the tenancy agreement and the Act remained at \$650.00 per month, despite the signing of a new tenancy agreement in March 2012, purporting to impose a higher rental rate of \$770.00.

I find that there is no dispute that the tenant owed \$2,405.70 in rental arrears as of May 31, 2012, confirmed by the ledger.

I find that, since May 31, 2012, the tenant only paid \$300.00 towards his rent and this occurred in July 2012, by which time the tenant had fallen a further \$1,300.00 behind in rent. I find that an additional \$650.00 was accrued when he failed to pay the rent owed for August 2012. Therefore, I find that the tenant had accrued \$2,405.70 in arrears prior to May 31, 2012 and a further debt of since May 2012 in the amount of \$1,650.00.

According to the data submitted, I find that there is \$4,055.70 in total rent arrears still outstanding.

Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

I find that the landlord is also entitled to total monetary compensation of \$4,155.70 comprised of \$4,055.70 rental arrears and the \$100.00 cost of the application. I order that the landlord retain the tenant's \$325.00 security deposit in partial satisfaction of the claim, leaving \$3,830.70 still outstanding.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent. This decision and order is final and binding and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue a monetary order in favour of the landlord for \$3,830.70 which must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The tenant's application is dismissed 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: August 27, 2012.

Residential Tenancy Branch