



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 MT CNR FF

Preliminary Issues

- 1) The Tenant confirmed he did not serve the Landlord with copies of his evidence. I informed the Tenant that, in accordance with the *Residential Tenancy Branch Rules of Procedure # 11*, I could not consider the evidence however I would consider his testimony.
- 2) Both parties confirmed the spelling of their surnames and requested that the style of cause reflect the correct spelling.
- 3) 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 his application and his request to set aside, or cancel the Landlord's Notice to End Tenancy, 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 Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities, to keep the security and or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking to be allowed more time to make his application to cancel a Notice to end tenancy, 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 his application.

The parties appeared at the teleconference hearing 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. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be issued a Monetary Order?
3. Should the Tenant be granted more time to make an application to dispute a Notice to end tenancy?
4. Should the Notice to end tenancy for unpaid rent be set aside or cancelled?

Background and Evidence

The parties agreed that the tenancy began in approximately June 2004 at which time the Tenant paid \$500.00 as the security deposit. Rent was originally \$1,370.00 payable on the first of each month.

The Landlord submitted into evidence copies of documents which included, among other things, a copy of a 10 Day Notice to end tenancy for unpaid rent dated August 11, 2012, letters to the Tenant indicating a repayment plan of past due rents, and a spreadsheet outlining the amount of rent and utilities due and amounts paid by the Tenant.

The Landlord stated that the Tenant began to fall behind on paying his rent so in September 2010 he entered into an agreement with the Tenant whereby the Tenant would pay an additional \$230.00 each month for a total amount of \$1,600.00 each month (\$1,370.00 rent + \$230.00 late payment). Both parties use English as a second language and the Landlord stated that they called the \$230.00 amount a late payment as this additional money was to go towards the previous unpaid rent (now late) that had accumulated over the first six years of the tenancy.

The Landlord submitted that when the Tenant began to stop making payments he

served him a 10 Day Notice by posting it to the Tenant's door on August 11, 2012. The Tenant confirmed receiving the Notice on August 11, 2012.

The Landlord referenced his spreadsheet included in his evidence and confirmed that since January 2010 and up to August 31, 2012 the Tenant owed \$43,440.00 rent plus \$1,238 hydro, plus \$4,077.00 gas for a total amount due of \$48,755.00. He confirmed that the Tenant made payments totalling \$45,529.00 which left an outstanding balance due for rent and utilities of **\$3,226.00**.

The Tenant submitted that he did not file his application to dispute the 10 Day Notice sooner because he was trying to make arrangements with the Landlord to resolve the issue.

The Tenant confirmed that he has not paid rent for September 2012, August, 2012 or July 2012. He argued that he has been going through financial hardship and that he was of the opinion that the additional \$230.00 being collected by the Landlord was an illegal rent increase. Upon further clarification the Tenant acknowledged that he has had troubles paying his full rent off and on for several years.

The Landlord clarified that the Tenant had made payments of \$1,300.00 in July 2012 and \$500.00 in August 2012 as indicated on his spreadsheet. The amount being requested for utilities in September 2012 were estimated amounts as the bills have not been received as of yet.

Analysis

When a tenant is issued a 10 Day Notice to end tenancy he has five (5) days to either pay his rent in full or file an application to dispute the Notice.

In this case the Tenant received the 10 Day Notice on August 11, 2012 and he did not make his application to dispute the Notice until August 22, 2012, because he was attempting to resolve the issue with the Landlord.

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 he did not apply within the prescribed timeframes does not constitute exceptional circumstances. Accordingly, I decline to hear the Tenant's request to cancel the notice to end tenancy.

The Tenant has not been successful with his application; therefore he must bear the burden of the cost of his application.

Upon review of the aforementioned, I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, August 21, 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.

The Landlord has claimed for unpaid rent and utilities up to August 31, 2012 for the total amount of \$3,226.00. However, there was no evidence to support the actual cost of the utilities or to support that the Tenant was properly served with copies of the utility bills and a 30 day demand for payment of these utilities. Therefore, I dismiss the Landlord's claim for unpaid utilities, without leave to reapply.

With respect to the Landlord's claim for unpaid rent, I accept the undisputed testimony and the information provided on the Landlord's spreadsheet that the Tenant short paid rent for June, July, August and September for a total amount of \$2,680.00 as follows:

MONTH	RENT DUE	AMOUNT PAID	Short Paid Amount	ACCUMULATED BALANCE DUE
July 2012	\$1,370.00	\$1,300.00	\$70.00	\$440.00
August 2012	\$1,370.00	\$500.00	\$870.00	\$1,310.00
September 2012	\$1,370.00	\$0.00	\$1,370.00	\$2,680.00

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Accordingly, I find the Landlord has met the burden of proof to establish a claim for unpaid rent and loss of rent up to September 30, 2012 in the amount of **\$2,680.00**.

The balance of the Landlord's claim relates to amounts that are listed on a spreadsheet which were disputed by the Tenant, which I found to be unsubstantiated and too confusing to follow. Therefore I find the Landlord did not meet the burden of proof on the

previous outstanding amounts and these amounts are hereby dismissed, without leave to reapply.

The Landlord has been successful with his application; therefore I award the Landlord recovery of his **\$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:

Unpaid rent and Utilities up to August 31, 2012	\$2,680.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,730.00
LESS: Security Deposit \$500.00 + Interest 17.71	<u>-517.71</u>
Offset amount due to the Landlord	<u>\$2,212.29</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order for **\$2,212.29**. This Order is legally binding and must be served upon the Tenant.

I declined to hear matters pertaining to the Tenant's application to cancel the 10 Day Notice as the Tenant did not file within the required timeframes.

The Tenant's monetary claim was dismissed, with 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: September 25, 2012.

Residential Tenancy Branch