



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNSD, FF

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking an order as follows:

1. To cancel a ten day notice to end tenancy for unpaid rent issued on July 4, 2012.

The landlord's application is seeking an order as follows:

1. For an order of possession for unpaid rent.
2. For a monetary order for unpaid rent, and
3. To keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the **relevant facts** and issues in this decision.

Preliminary Issue

In this case, the tenant is in dispute regarding a work contract he has with the landlord. The Residential Tenancy Act does not have any jurisdiction over employment contracts.

This hearing proceeded on the issues which are directly related to the tenancy agreement.

Issue(s) to be Decided

Should the ten day notice to end tenancy for unpaid rent issued on July 4, 2012, and August 3, 2012, be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenant was served with a notice to end tenancy for non-payment of rent on August 2, 2012, which was issued July 4, 2012. The tenant was also served with a second notice to end tenancy for non-payment of rent on August 3, 2012. The notices informed the tenant that the notices would be cancelled if the rent was paid within five days. The notices also explain the tenant had five days to dispute the notice.

The tenant testified due to losing his employment he has not paid any rent for July 2012, August 2012, and September 2012.

The landlord testified that under the terms of the tenancy agreement the tenant's rent was \$1,050.00, however, as a term of his employment the tenant was given a rebate of \$350.00, which was applied towards rent. The landlord stated the tenant owes \$700.00 for unpaid rent for July 2012. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that the tenant was not entitled to the rent rebated for the month of August 2012 or September 2012 and seeks the full amount of rent as stated in the tenancy agreement, as the tenant was no longer acting in an employment position. The landlord stated they seek to recover \$2,100.00 in unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date

In this case, the tenant's application is filed on August 23, 2012, and the tenant acknowledged he received the notice to end tenancy on August 2, 2012 and a secondary notice on August 3, 2012.

The tenant did not dispute the notices within the required timeframe under the Act, and the tenant also acknowledged he did not pay rent in accordance with the tenancy agreement within the five days of receiving the notices. As a result, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the unit.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The tenancy agreement specifies rent at the rate of \$1,050.00, payable on the first of each month. The tenancy agreement provides the tenant with a rent rebate in the amount of \$350.00, while employed by the landlord.

The evidence was the tenant did not pay any rent for July 2012, and the parties agreed the tenant was entitled to receive the benefit of a rent rebate in the amount of \$350.00. Therefore, I find the landlord is entitled to compensation for July 2012, rent in the amount of **\$700.00**.

The evidence was the tenant's did not pay any rent for August 2012 and September 2012 and was no longer employed by the landlord. Under the provision of the tenancy agreement the tenant was required to pay the full amount of rent due. Therefore, I find the landlord is entitled to compensation for unpaid rent in the amount of **\$2,100.00**.

I find that the landlord has established a total monetary claim of **\$2,850.00** comprised of unpaid rent for July, August and September 2012, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit of \$525.00 and interest of \$9.54 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,315.46**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy with the required time allowed under the Act. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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