



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, 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 partial satisfaction of his monetary claim. The tenant applied for an order to cancel the notice to end tenancy.

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

At the start of the hearing, the tenant stated that she had not received the notice of hearing package. The landlord stated that he had served it by registered mail. The tenant subsequently agreed that she had received the notice of registered mail, but had not picked it up. The tenant filed a witness statement that confirms that the notice was received on August 22, 2012, but went missing shortly after.

Based on the testimony of both parties, I find that the tenant was properly served with the notice of hearing package.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy 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 February 19, 2012. There was no written agreement. The rental unit consists of a two level home. Initially the tenant rented the lower level for \$700.00 per month. At the end of April 2011, the parties entered into a verbal agreement that effective May 2012, the tenant would rent the entire home. The tenant stated that she sub let the upper suite with the permission of the landlord. Both parties agreed that the rent for the full house was \$1,700.00 per month payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$350.00 and filed a receipt as proof of having done so.

Both parties made application subsequent to a notice to end tenancy dated August 08, 2012 for \$2,000.00 in unpaid rent.

The tenant pointed out that the notice was for the basement only and therefore this hearing should only address unpaid rent for the basement suite. The tenant maintained that all rent for the basement was paid and therefore she did not owe the landlord any rent and accordingly, the notice to end tenancy should be set aside.

The landlord stated that the tenant did not pay full rent and therefore he had issued the notice to end tenancy. At the time of the hearing the tenant had not paid any rent for September.

The tenant filed receipts for payment of rent for the months of February to August 2012. The tenant pointed out that the receipts indicate rent in the amount of at least \$700.00 was paid for all months except the current month of September.

The landlord stated that the tenant fell behind on rent starting June 2012. Based on the receipts filed by the tenant, the landlord agreed that the following payments were made:

1.	June 2012	\$1,100.00
3.	August 2012	\$700.00

The landlord has applied for an order of possession effective two days after service on the tenant and for a monetary order for unpaid rent and the filing fee

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant argued that all rent for the basement was paid and therefore, the landlord was not entitled to rent or an order of possession. Even if I accept the testimony of the tenant that all rent for the basement was paid, I find that the tenant still owes rent for the basement, because by her own admission, as of September 18, 2012, the tenant had not paid any rent for September 2012.

I prefer the testimony of the landlord and I find that the tenant rented the entire house effective May 2012. The tenant failed to pay full rent and therefore received the notice to end tenancy on August 08, 2012.

Even though the notice to end tenancy states that the rental unit is the basement, I find that the amount of unpaid rent applies to the entire rental unit. Based on the receipts, I find that as of the date of this hearing the tenant owes \$3,800.00 which includes the current month of September 2012.

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.

The tenant received the notice to end tenancy for unpaid rent, on August 08, 2012 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. 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 \$3,800.00 for unpaid rent. Since the landlord has proven his claim he is also entitled to the recovery of the filing fee of \$50.00. I order that the landlord retain the security deposit of \$350.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$3,450.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

Conclusion

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 **\$3,450.00**.

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 19, 2012.

Residential Tenancy Branch