



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OP, MN, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

I accept that the tenant was properly served with the Notice to End Tenancy and the Application for Dispute Resolution hearing package.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

Background and Findings

Order of Possession

The parties agree that the tenant was served with a 10 day Notice to End tenancy on July 23, 2012 seeking rent due July 1, 2012 in the sum of \$1,150.00. The landlord agrees that the tenant did pay this sum but that the sum was not "...deposited until August 2, 2012". The tenant testified that she dropped the cheque off at the landlord's office on July 26, 2012. As proof of this the tenant produced a receipt for the payment

which is a copy of her cheque a received stamp dated July 26, 2012. The landlord maintained that the cheque was not deposited until August 2, 2012.

I find that the date on which the landlord may have deposited the rent cheque to be irrelevant. The date that I find important is the date that the tenant delivered the cheque to the landlord. The evidence supplied shows that the tenant was served with a 10 day Notice to End Tenancy on July 23, 2012 and the tenant has evidence to show that she delivered payment to the landlord's office on July 26, 2012 that is within the 5 day time limit set out on the 10 day Notice to End Tenancy. I will accept the tenant's evidence and I find that that the landlord is therefore not entitled to an Order of Possession.

The landlord began to lead other reasons for wishing to end this tenancy. However as the landlord has only served a Notice to End Tenancy for unpaid rent and sought an Order of Possession on that basis this testimony was not considered.

As the tenant has now paid the rent claimed the application, the landlord's application for a monetary order is also dismissed.

As the landlord made this application after having received payment for the rent arrears requested in this application, I decline to allow the landlord to recover the filing fee paid for this application.

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 05, 2012.

Residential Tenancy Branch