



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;
- Monetary Compensation

Preliminary Matter: Parties Named as Tenants

The tenant's application had included several individuals named as co-tenant/applicants. However, there was only one name documented on the tenancy agreement as tenant and none of the other parties that were named had signed the tenancy agreement. Also, none of the additional persons named had been served by the landlord with the landlord's cross application.

Given the above, it was determined that the hearing would only proceed to deal with the dispute between the one applicant who signed the tenancy agreement and the landlord. The tenant's application was therefore amended to remove the other applicants who had been named as parties to this dispute.

Both the landlord and the tenant 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?
- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?
- Is the tenant entitled to monetary compensation?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in April 2012 with rent set at \$1,500.00 per month payable on the 1st day of each month and a security deposit of \$750.00 was paid by the tenant. In addition the landlord received two other payments by cheques in the amount of \$137.50 each, for a total security deposit of \$1,025.00. However, according to the participants, the landlord later refunded \$137.50 back to one of the occupants. The total deposit now being held in trust for the tenant is \$887.50.

In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, a copy of the tenancy agreement, written testimony, photos, copies of cheques and printouts of bank records.

The landlord testified that, the tenant had failed to pay rent owed for August 2012 and is \$1,500.00 in arrears, which is being claimed. The landlord testified that the tenant had since vacated the unit, but the landlord also incurred a loss of \$1,500.00 rent for September and left a substantial amount of damage to the rental unit. The landlord testified that they intend on filing an application for compensation for damages to the home caused by the tenant. In the application before me, the landlord is seeking a monetary order for rental arrears and an Order of Possession.

The tenant did not dispute that she was in arrears for rent owed, but stated that the landlord had failed to credit the tenant with the extra \$137.50 that had been paid in addition to the \$750.00 security deposit.

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 factor to consider is whether the Notice was supported under the Act by the fact that the tenant owed rental arrears. 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 there is no dispute that the tenant owes \$1,500.00 in rent as of August 1, 2012.

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.

With respect to rental arrears, I find that the landlord is also entitled to total monetary compensation of \$1,550.00 comprised of \$1,500.00 rental arrears and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$887.50 security deposit in partial satisfaction of the claim, leaving \$662.50 still outstanding.

In regard to the landlord's loss of rent for September 2012, I find that this was not an issue under dispute at the time of the application made on August 23, 2012. I find that, with respect to the loss for September and other damages, the landlord is at liberty to pursue a claim through dispute resolution seeking compensation under the Act.

Conclusion

I hereby dismiss the tenant's application in its entirety without leave.

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 \$662.50 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.

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 13, 2012.

Residential Tenancy Branch