



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 10, 2012 and a monetary order for rent owed.

Both parties appeared and gave testimony.

This is a review hearing of a previously determined application that was submitted through the direct request process and the landlord had been issued an Order of Possession and monetary order for rent owed. The tenant made a successful application requesting a participatory hearing and the matter is before me today.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an order of possession and monetary order.

Background and Evidence

The tenancy began in March 2012 with rent of \$1,800.00 and a security deposit of \$900.00 and pet damage deposit of \$450.00 were paid.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 10, 2012 and showing that the tenant owed \$2,450.00 rent for June and July 2012. This Notice was served to the tenant by registered mail sent on July 10, 2012, and therefore deemed under section 90 (a) of the Act to have been received on the 5th day after it is mailed.

The tenant testified that the mail was never received as they were on vacation. However, both parties agreed that on July 20, 2012, which fell within the five-day window to cancel the Notice, the tenant paid the landlord \$1,900.00.

The tenant testified that the \$1,900.00 was paid to the landlord based on a meeting that they had in which the parties discussed and agreed-upon rent abatements for loss of laundry, yard work to be done by the tenant, and construction interruptions. The tenant

testified that she believed that the \$1,900.00 brought her rent current and that all arrears were paid in full after calculating the abatements. The tenant testified that the funds were accepted by the landlord and a normal receipt was issued.

The tenant stated that she was not aware that the landlord was charging \$2,450.00 after the abatement, not \$1,900.00. According to the tenant, she received neither the July 10, 2012 Ten Day Notice to End Tenancy for Unpaid Rent nor the document with written calculations detailing the abatement. The tenant testified that, when she became aware that the landlord was expecting a further \$550.00, she tried to pay it but the landlord refused to accept the funds.

The landlord testified that on July 20, 2012, the amount still outstanding after the tenant's payment of \$1,900.00 was \$550.00.

The landlord's position is that the discussion held between the parties was documented in the letter dated July 10, 2012, which was sent by registered mail along with the Ten Day Notice to End Tenancy and the documents clearly showed that the normal rent of \$3,600.00 was reduced to \$2,450.00, not \$1,900.00. On the same day of the discussion, the landlord mailed the tenant the Ten Day Notice to End Tenancy for Unpaid Rent claiming \$2,450.00 and a copy of the letter detailing the abatement amounts that this calculation was based on.

The landlord is asking that the tenancy be ended with an Order of Possession in favour of the landlord and that a monetary order for \$550.00 be granted.

The landlord testified that the tenant has also failed to pay rent owed for August and September 2012 and a second Ten Day Notice to End Tenancy for Unpaid Rent was issued to the tenant on September 2, 2012. The landlord testified that a hearing has been scheduled to hear this application to enforce the second Ten Day Notice to End Tenancy for Unpaid Rent and it will be heard on October 22, 2012 under file #247569.

The landlord testified that a One Month Notice to End Tenancy for Cause was also issued to the tenant and was served on August 28, 2012. This One Month Notice to End Tenancy for Cause is being disputed by the tenant and a hearing has been scheduled to hear this matter on October 11, 2012 under file #247693. The tenant's application will also deal with the tenant's request for an order for the rent abatement for loss of services and facilities etc.

Neither of the above two applications are before me today.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by registered mail sent July 10, 2012, and deemed received on July 15, 2012. I find that 5 days later, whether the tenant was successfully served with the Notice or not, the tenant paid the landlord \$1,900.00 towards the rental arrears.

Regardless of whether or not this payment was considered as payment in full, as testified by the tenant, or constituted a partial payment, as testified by the landlord, I find that, in accepting these funds towards rent, the landlord failed to ensure that the tenant was made aware that these funds were being accepted for "use and occupancy only" and did not reinstate the tenancy, by giving the tenant a receipt that made this clear.

Under the Act, I find that the landlord had an obligation to make the tenant understand that acceptance of the funds would not serve to reinstate the tenancy and that the landlord would still be proceeding with the termination of the tenancy, despite the late payment satisfying what she considered as only a portion of the arrears.

For this reason, I decline to issue an Order of Possession to the landlord based on the Ten Day Notice to End Tenancy for Unpaid Rent and find that the tenancy was reinstated by the landlord.

In regard to what the correct amount that the disputed rent abatement should be, I find that each party felt they had reached a final agreement but the total amount that each one believed was agreed-upon did not match.

Even if I accepted the landlord's written communication detailing the abatement as accurate, I find it was mailed out to the tenant after-the-fact and the tenant does not agree that this was what was actually negotiated. Moreover, the tenant claimed not to have received the document at all prior to the landlord's application for dispute resolution and objects to its use as evidence.

In any case, I find that the agreement reached between these two parties is not sufficiently clear to enforce and the tenant has made an application requesting a determination of the abatement issue which will be heard in an upcoming hearing. I find that, because the amount of rental arrears owed to the landlord, if any, is contingent upon the outcome of the final determination of what abatement is warranted, I find that this issue should be dealt with in the tenant's application that will be heard on October 11, 2012.

I find that the party's attempt to reach a negotiated settlement on the subject of the abatement was not successful and therefore the matter of the abatement does need to be heard and determined as a separate issue. Accordingly, I make no finding on the

issue of the rental arrears or the applicable abatement to which the tenant may be entitled.

Conclusion

I hereby dismiss the portion of the landlord's application requesting the Order of Possession and find that the tenancy was reinstated.

I make no findings on the amount of rental arrears, if any, and make no finding on the issue of what abatement, if any, is applicable to the tenant's rent.

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 26, 2012.

Residential Tenancy Branch