



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, RP, RR, FF

For the landlord – OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied to cancel the 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to make repairs to the unit, site or property; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord withdraws there application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants, the landlord and the landlord's agent attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenant has applied for an Order for the landlord to make repairs to the unit, site or property and to reduce rent for repairs, services or facilities agreed upon but not provided. As these issues are unrelated to the tenants claim to cancel the Notice to End Tenancy these sections of the tenants claim have not be dealt with at the hearing today.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on October 01, 2012. At this time this is a month to month tenancy and the rent is \$1,100.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$550.00 on October 01, 2010. The landlord has provided part of a copy of the tenancy agreement in evidence.

The landlord testifies that the tenants failed to pay rent for October of \$1,100.00. A 10 Day Notice was served upon the tenants on October 09, 2012 in person and has an effective date of October 19, 2012. The Notice informs the tenants that they have five days to pay the rent or dispute the Notice. The tenant did file an application to dispute the Notice on October 12, 2012.

The landlord's agent testifies that the tenants also failed to pay rent for November, 2012. The total amount of outstanding rent is now \$2,200.00. The landlord seeks an Order to apply the tenants' security deposit of \$550.00 to the outstanding rent and the landlord seeks a Monetary Order to recover the balance of \$1,650.00. The landlord also seeks an Order of Possession effective two days after service.

The tenant disputes the landlord's agent's claims and testifies that they paid rent for October of \$1,100.00 on September 27, 2012. The tenant testifies he obtained a copy of that cheque from his bank to show he paid rent for October before the day it was due. The tenant agrees he has not paid rent for November, 2012 as the tenant claims the landlord has not been to collect the rent and has not contacted the tenant about the rent. The tenant testifies that it has been the landlords practise for the last two years to collect the rent from the tenants.

The landlord testifies that the tenants did pay a rent cheque on September 27, 2012 however this was for Septembers rent which was late. In light of insufficient evidence concerning whether or not Octobers rent was paid I allowed the parties to send additional evidence concerning this matter. The tenant attending became upset because the tenants request for an adjournment was denied. The tenants' request was denied as in my opinion an adjournment would take this matter into another month which would prejudice the landlord in light of the landlord's application for a Monetary Order and Order of Possession. The tenant became rude and argumentative and made derogatory comments about the Arbitrator at the end of the hearing. Both parties have since provided additional documentary evidence to determine the rent payment for October, 2012. The landlord has provided documentary evidence in the form of bank statements, rent ledgers and a copy of the cheque dated September 27, 2012. The tenant has provided a copy of a rent cheque dated September 27, 2012.

Analysis

Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have carefully considered all the evidence before me, including the sworn testimony of both parties, having reviewed the evidence sent after the hearing concluded I find the tenants cheque payment was for a late rent payment for September, 2012 and not for October, 2012 as stated by the tenant. There is no evidence to show that the tenant paid Septembers rent on August 31, 2012. There is evidence that the rent cheque paid for September 01, 2012 was not cleared by the bank and another cheque was issued by the tenants on September 27, 2012. The two rent cheques provided in evidence show different information under the message section on the cheques. The landlords copy of the cheque shows the wording "For Rent" the wording shown on the cheque provided by the tenant shows "For Rent Oct Rent". It appears from the evidence presented that the words "Oct Rent have been added to the tenants copy of the cheque. Consequently the tenant has not shown that October's rent has been paid and the landlord has met the burden of proof that Octobers rent was not paid. I further find the tenant has failed to pay rent for November, 2012 on the day it was due and although the tenant states it was the landlords common practice to collect the rent and the landlord failed to do so, the tenant does have the landlords address and could have sent a cheque to the landlord.

As the landlord has been successful with this application the landlord is entitled to keep the tenants security deposit of \$550.00 and this will be offset against the unpaid rent pursuant to s. 38(6)(b) of the Act. The landlord is also entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for October and November, 2012	\$2,200.00
Filing fee	\$50.00
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$1,700.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days and although the tenants did file an application to dispute the notice that application is unsuccessful as it has been determined that the tenants do owe rent for October and November, 2012.

Based on the foregoing, I find that the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. This includes the unheard portion of the tenant's application as the tenancy will end no orders for repairs or a reduction in rent for repairs will be considered.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,700.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: November 20, 2012.

Residential Tenancy Branch