



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to present all relevant testimony in respect to the dispute and to make relevant prior submission to the hearing and participate in the conference call hearing. The landlord was assisted by counsel. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The style of cause is amended to reflect the proper spelling of tenant's name as provided by the tenant.

Preliminary matters

The landlord requested to retract a tenancy agreement sent into evidence for the dispute address executed between the landlord and 2 individuals (*Karen & Jannine S_ _ _*) - clearly *not* the respondent - with a start date of October 01, 2010. The landlord testified that they found the agreement on file, thinking it was relevant for this matter and therefore sent it (*the wrong agreement*). I deferred to this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

On examination and based on the testimony of both parties, I find the (*the wrong agreement*) is not relevant to this matter. I accept the landlord's request to withdraw the (*the wrong agreement*) from evidence. The withdrawn evidence was not used in determining this Decision.

The undisputed testimony of both parties is that they entered into a verbal tenancy beginning October 31, 2010. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$550.00. The landlord claims the tenant failed to pay all the rent for July, 2012, and no rent for August, September, October, and November 2012, and on October 23, 2012 they personally served the tenant with page 1 of a Notice to End tenancy for non-payment of rent, citing in the notice that the tenant had failed to pay "\$1100.00 due on August 01, 2012". The tenant testified that they have always paid their rent and are not in arrears; and, in particular, beginning August 2012 they began paying the landlord the rent in cash each month (on the 20th of each month prior to its due date, and coinciding with the tenant's income). The tenant testified that upon every payment of rent in cash they have never requested a receipt. The tenant claims that on October 20, 2012, they met the landlord at a mall and paid the landlord \$1100.00 cash as rent for November 01, 2012, and again did not ask for a receipt. The landlord denies receiving any of the claimed cash payments.

The parties agree that the tenant then received page 1 and 2 of a Notice to End tenancy for non-payment of rent on November 04, 2012 along with the Application of the landlord for this hearing pursuant to the Notice to end dated October 23, 2012. The tenant testified that after receiving the November 04, 2012 Notice to End – inclusive of both pages, and despite their disagreement with the landlord's claims, they did not file to dispute any Notice received as the landlord had already filed their application. The November 04, 2012 Notice cited that the tenant had failed to pay "\$1100.00 due on November 01, 2012". The landlord submitted an additional Notice to End for Unpaid rent dated November 22, citing the tenant owed rent from July 01, 2012 in the sum amount of \$4559.71.

Analysis

Based on the testimony and document evidence of both parties I have reached a Decision. I find that in respect to the Notice to End dated October 23, 2012 the landlord did not provide the tenant with a *complete and valid* 10 Day Notice to End Tenancy for unpaid rent, therefore it is ineffective to end the tenancy. The landlord did not amend their application and relied on the invalid October 2012 Notice when they made

application November 01, 2012. As a result of the above, I find the landlord's incomplete Notice to End dated October 23, 2012 is ineffective to end the tenancy and the landlord is not entitled to an Order of Possession. Therefore, this portion of the landlord's application **is dismissed**, without leave to reapply based on the Notice dated October 23, 2012, with the result that the tenancy continues.

It must be noted that the landlord is at liberty to seek an Order of Possession based on a *complete and valid* Notice to End.

While I can accept the tenant's testimony that they have never sought a receipt for payments of rent in cash, I find the tenant is now in a position unable to provide *any* proof they paid *any* rent toward the arrears claimed by the landlord. As a result, on a balance of probabilities, I prefer the evidence of the landlord and find they are owed a quantum of rent arrears to November 30, 2012 in the claimed sum of \$4559.71. The landlord is further entitled to recovery of the filing fee of \$50.00 for a sum entitlement of **\$4609.71**.

As I have found that the tenancy is not at an end, the security deposit in this matter must be retained and administered in accordance with the Act at the end of the tenancy.

Conclusion

Landlord's request for an Order of Possession is dismissed. The tenancy **continues**.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$4609.71**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: December 05, 2012

Residential Tenancy Branch