



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant acknowledged receiving the landlord's Application for Dispute Resolution on December 5, 2012 via registered mail but denied receiving any supporting documentation from the landlord. The landlord's agent testified that the evidence package was left in the door frame of an adjoining door on December 16, 2012. The tenant stated that he does not use that door and that it is sealed so tightly documents could not be slid in the door frame. I found I was not satisfied that the tenant had received the landlord's evidence package and I excluded it from consideration.

I informed the parties that I would permit the landlord to make verbal submissions in support of his application. The tenant confirmed that he did not submit any documentary evidence for this proceeding.

I noted that the parties had participated in a previous dispute resolution hearing held on November 22, 2012 and that a Notice to End Tenancy for unpaid rent was cancelled. I determined the landlord was seeking an Order of Possession based upon a Notice that has been cancelled. However, the tenant indicated that he and his mother will be vacating the rental unit January 15, 2013 and did not object to the landlord being provided an Order of Possession for that date.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and/or loss of rent and if so, the amount?

Background and Evidence

I heard undisputed testimony that under a verbal tenancy agreement the tenant was required to pay rent of \$700.00 by the 1st day of every month. The parties were in disagreement as to whether a security deposit was paid. The tenant submitted that a \$350.00 security deposit had been paid. The landlord submitted that a security deposit was not collected.

The landlord submitted that the tenant owes \$300.00 in rent for September 2012 and has not paid any rent for the subsequent months. On November 5, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door indicating rent of \$1,700.00 was outstanding as of November 1, 2012. With this application the landlord is seeking to recover unpaid rent and/or loss of rent up to and including the month of January 2013 in the total amount of \$3,100.00.

The tenant submitted that he has paid the rent for the months up to and including December 2012. The tenant explained that he would ordinarily cash his mother's disability cheque near the end of every month and then give cash to the landlord's father. The tenant submitted that the last time he paid rent was on November 26 or 27 for December 2012 rent.

I requested that the landlord's father be called to the hearing to testify. I was informed that the landlord's father does not speak English; however, the tenant confirmed that he speaks the same language as the landlord and the landlord's father. I instructed the tenant to ask the landlord's father whether he had received rent from the tenant. The landlord's father's response was mostly in Punjabi except for key words including "no" and "no monies". The tenant confirmed that the landlord's father had denied receiving rent from the tenant. The tenant submitted that the landlord's father was being prompted by the landlord and the landlord's agent. I did not detect the landlord or the landlord's agent prompting the landlord's father.

I noted that the tenant had been involved in a previous dispute with the landlord over allegations of unpaid rent; yet, according to the tenant, he continued to pay in cash. Further, the tenant did not submit any sort of documentation, such as banking records that would corroborate. The tenant explained that although he received the landlord's Application for Dispute Resolution on December 5, 2012 he did not have time to obtain and submit supporting documents because he works part-time. The tenant did not indicate that he had made any effort to obtain supporting documentation.

Analysis

Since the tenant stated that he and his mother are moving out January 15, 2013 and was agreeable to an Order of Possession being provided to the landlord I provide the landlord with an Order of Possession effective January 15, 2013.

With respect rent, I find, on the balance of probabilities, that the landlord did not receive rent from the tenant as submitted by the landlord. I make this finding based upon the following considerations:

- The tenant has been in a previous dispute resolution proceeding involving allegations of unpaid rent and I find it unreasonable that a tenant in that situation would continue to pay rent in cash;
- The landlord's father denied receiving cash rent payments from the tenant; and,
- The tenant allegedly used funds from cashing his mother's disability cheque to pay rent, which would generate documentation, yet the tenant did not make any effort to provide such documentation as evidence prior to this hearing.

Based upon the foregoing, I find the landlord has established an entitlement to recover unpaid rent for September 2012 through December 2012 as claimed. Taking into account the tenant is required to return vacant possession of the rental unit to the landlord on January 15, 2013 I award the landlord one-half of the monthly rent for January 2013.

With respect to the security deposit, I give the tenant the benefit of the doubt as the requirement to pay a security deposit would have been recorded in a tenancy agreement had the landlord prepared one in accordance with the requirements of the Act. I authorize the landlord to retain the \$350.00 security deposit in partial satisfaction of the unpaid rent and deduct \$350.00 from the landlord's Monetary Order.

I award the \$50.00 filing fee to the landlord.

In light of the above, and I provide the landlord with a Monetary Order calculated as follows:

| | |
|----------------|-----------|
| September 2012 | \$ 300.00 |
| October 2012 | 700.00 |

| | |
|------------------------|-----------------|
| November 2012 | 700.00 |
| December 2012 | 700.00 |
| January 1 – 15, 2013 | 350.00 |
| Plus: filing fee | 50.00 |
| Less: security deposit | <u>(350.00)</u> |
| Monetary Order | \$ 2,450.00 |

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective January 15, 2013 pursuant to the tenant's agreement. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,450.00 to serve and enforce as 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: January 03, 2013.

Residential Tenancy Branch

