



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

Should the notice to end tenancy for unpaid rent be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit for unpaid rent?

Background and Evidence

The tenancy began on September 1, 2012, Rent in the amount of \$1,000.00 is payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The parties agreed the tenant was served with a ten day notice to end tenancy for unpaid rent dated January 4, 2013.

The tenant testified on January 6, 2013, she went to the landlord and tried to pay rent but he was not home and the landlord's nephew told her they would not be accepting any rent. The tenant stated that she went back on January 8, 2013, and a child answered the door. However, some time after the eighth she was able to talk to the landlord and again he refused to accept rent.

The landlord's agent testified that at no time did they refuse to accept rent. The landlord's agent stated if the tenant pays rent for January and February 2013, they would consider re-instating the tenancy.

The tenant testified that she has January 2013, rent, however, does not have February rent in full.

The tenant when questioned regarding the lack of February 2013, rent, when rent was due on February 1, 2013, became argumentative and was using inappropriate foul language, the tenant did not respond to the questions directly asked.

Analysis

In this case, the evidence of the tenant was she attempted to pay rent for January 2013, and the landlord refused payment. The landlord's agent denies they refused to accept rent and stated if the tenant paid January 2013 and February 2013, rent in full as required by the tenancy agreement they would consider re-instating the tenancy.

The evidence of the tenant was that she does not have February 2013, rent as required by the tenancy agreement.

Based on the above, on the balance of probabilities, I accept the landlord version of events as it is reasonable and has the ring of truth.

While the tenant did apply to dispute the Notice within five day as required by the Act, I find the tenant's application to cancel the notice has no merit as rent for January 2013, has not been paid and the tenant does not have rent for February 2013, as required by the tenancy agreement and the Act.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of unpaid rent for January, February 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,550.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent as required by the notice.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: February 04, 2013

Residential Tenancy Branch

