



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, ERP, MNDC, RR, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to carry out repairs and reduce rent. The tenant also applied for a monetary compensation for loss under the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant requested additional time to gather evidence to support his case. He stated that he would be getting a doctor's report that he intended to rely on, sometime in the following week. To enable the tenant to properly support his application, I dismiss his application with leave to reapply.

Accordingly, this hearing dealt with the landlord's application for an order of possession, to retain the security deposit and for a monetary order for unpaid rent and the filing fee

Issues to be decided

Did the landlord serve a valid notice to end tenancy? Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on June 01, 2009. The rent is \$1,248.00 per month due on the first day of each month. The rental unit consists of an apartment located in a building that houses a total of 10 rental units.

The dispute rental unit consists of two bedrooms and is shared by two or three persons. The three tenants share the rent and the rent is paid directly to the landlord by way of three cheques in the amount of \$416 each. The landlord testified that two of the original tenants still occupy the rental unit while the third tenant has changed over the years.

In October 2010, pursuant to the landlord's application for dispute resolution, he was granted an order of possession and a monetary order for unpaid rent. The landlord did not enforce either.

On February 06, 2013, the landlord served the tenant with a notice to end tenancy for \$2,151.00 in unpaid rent, to be effective on February 16, 2013. The tenant disputed the notice in a timely manner. The tenant stated that he did not owe rent. The landlord filed a statement of accounts dating back to 2009.

The landlord testified that the amount of \$2,151.00 included the amount already dealt with in the prior hearing, for which the landlord had in his possession a monetary order. The landlord also filed a copy of a cheque from BC Employment and Assistance that was made out in the landlord's name and had a stop payment on it. The landlord stated that the cheque was issued on the tenant's behalf and had the tenant's identifying number on it. The tenant was at a loss to explain how the stop payment was put on the cheque.

Analysis

Based on the sworn testimony of both parties, I find that the amount of unpaid rent as stated on the notice to end tenancy was inaccurate. It included amounts from the start of tenancy in 2009 and an amount that the landlord had already been granted in a prior hearing. Therefore I find that it was unreasonable to expect the tenant to pay an amount that was inaccurate and that he did not understand. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

However, I find that the landlord did receive a cheque on behalf of the tenant from BC Employment and Assistance in August 2012, upon which a stop payment was placed. I am unable to determine the source of the stop payment and it is more likely than not that the tenant was not the person who initiated the stop payment, because such an action would provide no benefit to him. I find that if this cheque was issued to the landlord, then he is entitled to the amount of the cheque.

Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$375.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord has proven a minor portion of his application and therefore must bear the cost of filing this application.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue. I grant the landlord a monetary order in the amount of **\$375.00**.

The tenant's application is dismissed with leave to reapply.

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: March 08, 2013

Residential Tenancy Branch

