



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, OPC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 2, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied on May 7, 2013 for:

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

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on February 1, 2013. Rent of \$900.00 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 \$450.00. The Tenant failed to pay rent for May 2013 and on May 15, 2013 the Landlord personally served the Tenant with a 10 notice to end tenancy for unpaid rent. The Tenant has not filed an Application for Dispute Resolution to dispute the Notice, has not paid the rent and has not moved out of the unit. The Landlord claims \$900.00.

The Tenant states that rent has not been paid and that she is without a working toilet. The Landlord states that the Tenant's toilet has been plugged on several occasions and that on the last occasion, the plumber found cosmetic containers to be plugging the toilet. The Landlord states that the Tenant did not inform the Landlord of this latest problem but will send a plumber again to the unit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on undisputed evidence, I find that the Tenant was served with the Notice for unpaid rent and I find the Notice to be valid. The Tenant has not filed an application to dispute the Notice, has not paid the outstanding rent and has not moved out of the unit. Given these facts, I find that the Landlord is entitled to an **Order of Possession effective May 31, 2013**. I also find that the Landlord has established a monetary claim for **\$900.00** in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$950.00**. Setting the security deposit of **\$450.00** plus zero interest off the entitlement leaves **\$500.00** owed by the Tenant to the Landlord.

As the tenancy will end due to unpaid rent, I find that it is not necessary to make a determination on the one month notice to end tenancy for cause and I dismiss this part of the Tenant's claim. As the Landlord has agreed to send a repair person for the toilet

and considering that the tenancy will end within three days, I decline to make an order in relation to this repair.

Conclusion

I grant an Order of Possession effective 1:00 p.m. on May 31, 2013 to the Landlord.

I order that the Landlord retain the **deposit** and interest of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$500.00**. If necessary, this order may be filed in the Small Claims 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: May 28, 2013

Residential Tenancy Branch

