



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Surrey. The tenancy began on December 15, 2012. The current monthly rent is \$900.00. The tenants paid a security deposit of \$475.00 at the start of the tenancy. I was not provided with a copy of a written tenancy agreement.

The landlord testified that the tenants did not pay the full amount of rent for April on time; they paid \$400.00 on April 2, 2012. On April 9, he served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The landlord did not provide a copy of the Notice to End Tenancy. He testified that the tenants paid a further \$450.00 on April 19, 2013.

The landlord testified that on May 9, 2013 the tenants gave him a cheque in the amount of \$900.00 dated May 7, 2013. He said that the bank refused to cash the cheque because it was improperly dated. The landlord did not submit any documentary evidence from a bank to show that the cheque had been rejected. The landlord said that there is \$950.00 in outstanding rent, \$50.00 from April and \$900.00 for May.

The tenant testified that they paid the landlord \$450.00 on April 2, 2013, but the landlord insisted that he was taking \$50.00 from the rent payment as compensation for damage

to his car. The tenant said that she never agreed that the landlord could keep some of the rent for supposed damage to his car. The tenant testified that they gave the landlord a cheque for \$900.00 for May rent. The cheque has not been returned to them and they have not been advised by their bank that there is any reason why the cheque cannot be cashed. She said that she is not prepared to make another payment to the landlord until he returns the May cheque that he holds. The landlord submitted a copy of the face of the cheque. It appears that the landlord wrote the words: "FOR USE & OCCUPANCY ONLY" on the cheque over the notation line. The words: "DO NOT WRITE ON" were also written on the cheque. After the hearing I gave the landlord an opportunity to submit a copy of the 10 day Notice to End Tenancy that he claimed to have served on the tenants. The landlord sent a fax to the Residential Tenancy Office after the hearing. He said in the fax that he could not find a copy of the Notice to End Tenancy.

Analysis and conclusion

The burden of proving that he is entitled to the relief claimed in his application rests upon the landlord. He has not provided sufficient evidence to show that he served the tenants with a proper form of Notice to End Tenancy. His claim for an order for possession is therefore dismissed.

I accept the tenants' testimony that the landlord was paid \$900.00 rent for April and the landlord's claim for \$50.00 unpaid rent for April is dismissed. With respect to the claim for May rent, the landlord has not provided evidence from the bank that the cheque could not be cashed due to insufficient funds. It appears that the landlord may himself have spoiled the cheque by writing on it. When the landlord returns the un-cashed cheque to the tenants they will be obliged to pay him May rent in the amount of \$900.00. If the payment is not made after the cheque is returned the landlord will be at liberty to issue a 10 day Notice to End Tenancy for unpaid rent. The landlord's application for a monetary order for May rent 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: May 21, 2013

Residential Tenancy Branch

