



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this matter with one another. The tenant confirmed that he received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door on May 18, 2013. The tenant testified that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on June 13, 2013. I am satisfied that the landlord served both of the above documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed that this tenancy commenced when the tenant took occupancy of the rental premises on October 13, 2012. The landlord testified that there was no written residential tenancy agreement, but monthly rent was set at \$1,000.00, payable in

advance on the first of each month. The landlord initially testified that there was no security deposit for this tenancy.

The tenant testified that he has a written residential tenancy agreement. He testified that all contact with the landlord is through the landlord's property manager, Nicole. He gave undisputed sworn testimony that there is a court order preventing the landlord from setting foot on this rental property. The tenant claimed that monthly rent is supposed to be \$800.00. He testified that he paid a \$500.00 security deposit on September 24, 2012, and also paid garage door opener deposits of \$170.00 to the landlord's property manager. The landlord corrected his earlier testimony and agreed that there was a \$500.00 security deposit paid for this tenancy. He maintained that the garage door opener is a returnable deposit to the owner of this building, a matter that does not involve him as landlord.

The landlord's application for a monetary award of \$2,250.00 included unpaid rent of \$200.00 for April 2013, \$1,000.00 for May 2013 and \$1,000.00 for June 2013. The landlord said that the tenant did pay \$800.00 during the first week of July 2013, but the landlord has applied this to the outstanding rent and no actual payment of rent for July 2013 has occurred. Although the landlord referred to his "tenant ledger" for this rental unit during this hearing, he did not have copies of any receipts issued to the tenant as these are handled by his property manager. He did not enter any written evidence other than a copy of the 10 Day Notice.

The tenant referred to multiple receipts issued by the landlord's property manager. He testified that he had signed receipts from the property manager for a \$500.00 payment on June 22, 2013, a \$400.00 payment on June 26, 2013, and an \$800.00 payment on June 29, 2013, the last of which was for his rent for July 2013. He said that he had an "agreement" with the landlord's property manager whereby he would pay her \$700.00, the amount that the tenant claimed was owing within the next three months. He said that the plan was to reassess the tenant's rent for September 2013. Although the tenant provided no written evidence, he read into the record of this hearing the wording used in the June 29 receipt issued by the landlord's property manager. The tenant testified that there was no mention in the property manager's receipt that the tenant's \$800.00 payment was being accepted for "use and occupancy" only.

The landlord said that he was unaware of the tenant's payments or any receipts having been issued by his property manager since the 10 Day Notice was issued, but for the exception of the most recent \$800.00 payment. He said that if payments have been made by the tenant of which the landlord is unaware, the landlord will need to address this with his property manager. The parties agreed to meet with one another at an

agreed time and place to compare the landlord's tenant ledger with the receipts cited by the tenant. The landlord will ensure that his property manager is in attendance at the meeting they arranged at the hearing. While the parties were willing to meet with one another, the landlord continued to seek an Order of Possession to be used if he is not satisfied with the arrangements made at their upcoming meeting. The landlord also repeated his request for a monetary award.

Analysis- Landlord's Application for an Order of Possession

The tenant failed to pay the \$1,200.00 identified as owing in the landlord's 10 Day Notice issued on May 17, 2013, within five days of being served with that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 27, 2013.

There is also undisputed evidence that the landlord's property manager accepted at least \$800.00 in payments from the tenant on either June 29, 2013, as the tenant claimed, or the first week of July 2013, as maintained by the landlord. The tenant also gave convincing sworn testimony that he has two other receipts signed by the landlord's property manager for payments of \$500.00 on June 22, 2013 and \$400.00 on June 26, 2013. There was no evidence from the landlord that any of these payments were accepted for "use and occupancy" only and not to reinstate this tenancy.

Based on the above evidence, I find that the landlord, through his property manager, reinstated this tenancy after the effective date cited in the 10 Day Notice was to take effect. Of particular importance is the absence of any statement that the landlord's property manager accepted the \$800.00 payment of June 29, 2013 for use and occupancy only. The landlord's acceptance of at least one and possibly as many as three significant payments after the tenancy was supposed to end leads me to conclude that the tenant believed that these payments would enable him to continue his tenancy even after the 10 Day Notice was to take effect. For these reasons, I find that the landlord's property manager acting on the landlord's behalf has reinstated this tenancy. I find that the 10 Day Notice posted on the tenant's door on May 18, 2013 is of no effect or force.

Analysis- Landlord's Application for a Monetary Order

As noted above, the parties made arrangements during the hearing to meet to compare their records and receipts to determine how much remains owing from this tenancy. This meeting may very well resolve the monetary issues in dispute.

There is also undisputed evidence that the tenant owes at least \$700.00 in unpaid rent. On this basis, I allow the landlord a monetary Order in the amount of \$700.00. If the meeting between the parties is unable to resolve the difference of opinion as to what remains outstanding, the landlord is at liberty to issue a new 10 Day Notice and seek a monetary award for the difference between the \$700.00 issued in this decision and the amount that he believes remains owing.

As the landlord has been partially successful in this application, I allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

The landlord's 10 Day Notice is set aside and is of no force or effect. This tenancy continues.

I issue a monetary Order in the landlord's favour in the amount of \$750.00, an amount which enables the landlord to recover unpaid rent that the tenant agreed remains owing and the landlord's filing fee.

As this tenancy continues, the tenant's security deposit remains in effect and I make no finding with respect to that deposit.

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: July 10, 2013

Residential Tenancy Branch

