



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and reimbursement of the filing fee. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, upon what terms?

Background and Evidence

This month-to-month tenancy commenced about 13 years ago. At the present time the monthly rent of \$600.00 is due on the first day of the month.

The tenant was in the hospital at the end of June. On July 3, 2013 he came home to find the contents of his suite packed up and in the garage. Because the only application before me was only for an order of possession based upon non-payment of rent I did not hear any evidence on the particulars of that situation except for particulars of payment of rent or offers to pay rent.

The tenant's friend testified that she heard the tenant offer the landlord the July rent on July 3 in the presence of the police officers but she refused to accept it. The landlord testified that she did not hear any such offer.

On July 13 the landlord issued and served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent by personal service. The tenant acknowledged service on that date and the tenant's advocate testified in the hearing that she had the notice before her.

That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Under the heading "Important Facts" included the following information for tenants:

- "The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer.
- The tenant who accepts the notice must move out by the date set out on page 1 of this notice or sooner."

The tenant testified that he did not pay the rent at that time because of anger. He testified that at the end of July he offered to pay the rent in cash but the landlord refused to accept it. The landlord disputes the tenant's evidence on this point.

The parties both agreed that at one point the tenant offered to pay half the rent, which the landlord refused. The tenant said he offered payment of half the rent because of anger. The tenant said this offer was made about two weeks after the first offer; the landlord says it was after the application for dispute resolution was served on the tenant on July 23.

The tenant's advocate testified that she witnessed the tenant offer to pay the rent to the landlord during another incident when the police were involved on August 5.

The tenant has not filed any application for dispute resolution disputing the notice to end tenancy. The tenant and his advocate testified they did not know they were required to do so.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a 10 Day Notice to End Tenancy for Non-Payment of Rent does not pay the overdue rent or dispute the notice within the five days of being served with the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the unit by that date.

The 10 Day Notice to End Tenancy for Non-Payment of Rent was served on the tenant on July 13. The tenant had until July 18 to pay the arrears of rent in full or to file an application for dispute resolution. Even if I accept the tenant's evidence that he offered to pay the arrears and the offer was refused, his evidence is that the offer was made at the end of July, which is outside the five day time period.

As the tenant has not paid the outstanding rent and did not apply to dispute the Notice within the five day time period, he is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$50.00 comprised the fee paid by the landlord for this application. Pursuant to section 72 I order that the Landlord may retain \$50.00 from the security deposit in full satisfaction of this claim.

Conclusion

- a. An order of possession effective two days after service on the Tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. An order has been allowing the landlord to withhold \$50.00 from the security deposit for reimbursement of the fee paid by the landlord for this application.

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: August 26, 2013

Residential Tenancy Branch

