



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MaxSave Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlords: OPC, MNR, MNSD, MNDC, FF
Tenants: CNR, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy

The hearing was conducted via teleconference and was attended by the landlord's agent and one of the landlords and one of the tenants.

While the landlord's Application indicated they were seeking an order of possession for cause, after a 1 Month Notice, the agent clarified that no such notice was issued but rather they were seeking the order of possession based on the non-payment of rent after issuing a 10 Day Notice. As both parties were present and the tenant had applied to cancel a 10 Day Notice I amend the landlord's Application to seek an order based on a 10 Day Notice to End Tenancy for Unpaid Rent and not a 1Month Notice to End Tenancy for Cause.

The parties agree there is no outstanding rent so I amend the landlord's Application to exclude the seeking of a monetary order for unpaid rent and to retain the security deposit for that unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on March 1, 2013 for a month to month tenancy beginning on April 1, 2013 for the monthly rent of \$1,600.00 due on the 1st of each month and a security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on July 9, 2013 with an effective vacancy date of July 19, 2013 due to \$1,600.00 in unpaid rent.

The landlord testified the tenants failed to pay the full rent owed for the month of July 2013 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally to one of the tenants on July 9, 2013 at 6:00 p.m. and that this service was witnessed by a third party. The landlord testified that the rent for July and August 2013 were paid in full.

The tenant submits that he had attempted to pay the landlord rent for the month of July 2013 on July 5, 2013 but that the landlord had refused to accept it. The parties agree the tenant had signed a typewritten agreement on June 28, 2013 that the landlord would accept payment of ½ month's rent for July 2013 if the tenants moved out on July 15, 2013.

The tenant submits the landlord refused payment and that when he received the 10 Day Notice to End Tenancy he had no choice but to apply to cancel the notice and it was not until the landlord's new agent contacted him that he was able to pay the rent. The landlord's agent and the landlord present in the hearing had no response to the tenant's testimony regarding the landlord's refusal to accept the payment of rent.

The landlord's agent testified that receipts were issued and she advised that they indicated that rent was paid. The landlord's agent did not indicate that the monies received were for use and occupancy only.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 9, 2013 and the effective date of the notice was July 19, 2013.

Despite the submission of a typewritten agreement that the tenancy would end on July 15, 2013 and the issuance of the 10 Day Notice to End Tenancy, I accept the tenant's undisputed testimony that he had attempted to pay rent in full on July 5, 2013, prior to the issuance of the 10 Day Notice.

I also accept the tenant continued to attempt to pay the rent in full and was refused until the landlord's new agent took over. As such, I find the landlord cannot end the tenancy

for unpaid rent when he was the cause of the rent to be unpaid. I dismiss the landlord's application for an order of possession.

I also note that as the landlord has now accepted the payment of rent and as not issued a receipt that states the monies received after July 9, 2013 were for use and occupancy only the landlord has reinstated the tenancy and the agreement dated June 28, 2013 and the 10 Day Notice to end Tenancy for Unpaid Rent issued on July 9, 2013 are no force or effect.

Conclusion

I dismiss the landlord's Application in its entirety.

I grant the tenant's Application and cancel the 10 Day Notice to End Tenancy for Unpaid issued on July 9, 2013 and find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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 14, 2013

Residential Tenancy Branch

