



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkview Gardens
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied originally for more time to cancel a Notice to End Tenancy for unpaid rent. The tenant later amended this to remove this section and include the section to cancel the Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The landlord testifies that the tenant did not serve the landlord with his application and Notice of hearing but did serve the landlords agent. The tenant testifies that the landlord's agent returned the hearing documents to the tenant two days after being served. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agree that this month to month tenancy started on October 01, 2012. Rent for this unit is \$597.14 per month and is due on the first day of each month. The landlord has provided a copy of the tenancy agreement in documentary evidence.

The landlord testifies that the tenant owed rent from May, 2013 of \$25.00. The tenant failed to pay rent for June, 2013 of \$595.14. A 10 Day Notice was served upon the tenant on June 07, 2013 by posting the Notice to the tenant's door. The landlord has provided a copy of the Notice in documentary evidence and the Notice indicates that rent is outstanding of \$620.14. The Notice informs the tenant that he has five days to either pay the outstanding rent or dispute the Notice or the tenant must vacate the rental unit on June 15, 2013. The landlord has provided a rent ledger in documentary evidence.

The landlord testifies that the tenant did not pay the outstanding rent and then failed to pay rent for July, 2013 of \$595.14. The total amount of outstanding rent is now \$1,215.28. The landlord requests an Order of Possession and a Monetary Order to recover the outstanding rent and the \$50.00 filing fee.

The tenant disputes that he owes \$25.00 for May, 2013. The tenant testifies that he has a receipt showing rent was paid in May however the tenant has not provided a copy of that receipt in documentary evidence. The tenant agrees that he has not paid rent for

June or July, 2013 and agrees he therefore owes \$1,190.28. The tenant testifies that the landlord would not make repairs to the unit so the tenant withheld rent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant disputes that he owes rent of \$25.00 for May however the tenant has provided no evidence to support his claim that rent was paid in May and the landlord has provided corroborating evidence in the form of a rent ledger showing \$25.00 as being in arrears. The tenant does not dispute that he owes rent for June and July, 2013. Therefore I am satisfied with the evidence before me that the tenant has failed to pay rent to a total amount of **\$1,215.28**. The landlord has therefore established a claim for a Monetary Order to recover this rent pursuant to s. 67 of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on June 10, 2013 and the effective date of the notice is amended to June 20, 2013 pursuant to section 53 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and although the tenant did dispute the Notice within the allowable time frame the tenant did not pay the outstanding rent.

Based on the foregoing, I find that the landlord has therefore established a claim for an Order of Possession pursuant to section 55 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,265.28**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without 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: July 16, 2013

Residential Tenancy Branch