



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, OPC, CNC, ERP, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to notices for non payment of rent and for cause and for a monetary order for unpaid rent and the filing fee.

The tenant applied for an order to cancel the notices to end tenancy and for an order directing the landlord to carry out emergency repairs. The tenant also applied for a monetary order for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notices to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to his monetary claim?

Background and Evidence

The tenancy started about five years ago. The current monthly rent is \$2,000.00 per month payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$800.00.

The landlord stated that the tenant failed to pay rent for September and on September 23, 2013 the landlord served the tenant with a notice to end tenancy for non payment of rent. The tenant paid rent in a timely manner but again failed to pay rent for October.

On September 30, 2013, the landlord served the tenant with a notice to end tenancy for cause.

On October 06, 2013, the landlord served the tenant with a notice to end tenancy for non payment of rent for October. The tenant paid rent by cheque on October 08, 2013. This cheque was returned to the landlord for insufficient funds on October 15, 2013. The landlord filed a copy of the returned cheque.

As of the date of this hearing, the tenant agreed that rent for October was not paid. The landlord has applied for a monetary order for the same.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on October 06, 2013 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. As agreed to by the tenant, I find that the tenant did not pay rent for October and therefore I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$2,000.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the notice for nonpayment of rent is upheld, I did not consider the notice to end tenancy for cause. Also, since the tenancy is ending, the tenant's application for an order directing the landlord to carry out repairs is not necessary.

The parties discussed the move out date of the tenant and the landlord agreed to allow the tenancy to continue until November 30, 2013, if the tenant paid rent for October and November. The landlord agreed not to serve the order of possession prior to November 30, 2012 if the tenant complied with the payment of rent.

The landlord has proven his case and is entitled to the return of the security deposit. I allow the landlord to retain \$50.00 from the security deposit. The tenant has not proven his case and must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,000.00**. The landlord May retain \$50.00 from the security deposit.

The tenant's application is dismissed in its entirety.

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: October 25, 2013

Residential Tenancy Branch

