



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End tenancy, issued on August 31, 2013;
2. To cancel a 10 Day Notice to End Tenancy for non-payment of rent issued on September 2, 2013.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

Tenant's application

This matter was set for hearing by telephone conference call at 2:00 P.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the Applicant did not attend the hearing by 2:10 P.M, and the Respondent appeared and was ready to proceed, I dismiss the claim without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant.

This order must be served on the tenant and may be filed in the Supreme Court.

Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served personally on the tenant on September 2013. I find that the tenant has been duly served in accordance with the Act.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The tenancy began May 1, 2013, rent in the amount of \$740.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant. On August 16, 2013 the parties agreed that the tenant did not pay full rent for August and the parties agreed the landlord would be retain the security deposit to cover the balance of rent owed.

The landlord testified that the tenant did not pay all rent owed for September 2013, and was served with a notice to end tenancy and a balance of \$340.00 remains outstanding. The landlord stated that the tenant has not paid all rent for October and a balance of \$330.00 remains outstanding. The landlord seeks to recover unpaid rent in the amount of \$670.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) 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 evidence of the landlord was the tenant did not pay all rent owed for September and October 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled recover unpaid rent in the amount of **\$670.00**.

I find that the landlord has established a total monetary claim of **\$720.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application to cancel a 1 Month Notice to End tenancy, issued on August 31, 2013, is dismissed without leave to reapply.

The tenant's application to cancel to cancel a 10 Day Notice to End Tenancy for non-payment of rent issued on September 2, 2013, is dismissed without leave to reapply.

The landlord is granted an order of possession. The landlord is granted a monetary order in the above amount.

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 24, 2013.

Residential Tenancy Branch