



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for:

- An order to cancel the notice to end tenancy for unpaid rent.
- A monetary order for compensation
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Both parties were present at the hearing with translators. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent ?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for Unpaid Rent?
- Is the tenant entitled to monetary compensation?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on August 7, 2013 and the current rent is \$1,400.00 per month payable on the 1st day of each month. A security deposit of \$700.00 was paid.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence. Only the first page of this two-page Notice was in evidence.

The landlord testified that the tenant failed to pay rent for September, October, November, 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The tenant acknowledged receiving only the first page of the Notice.

The landlord testified that the tenant failed to pay rent owed for December 2013 and January 2014 accruing arrears totaling \$7,000.00. The landlord is seeking a monetary order and an Order of Possession

The tenant agreed that he had not paid the rent, but explained that the rent was withheld due to serious problems in the tenancy with respect to a pending foreclosure, discrepancies in regard to who the landlord was, harassment by the landlord, violations of the Act with regard to people accessing the unit without notice, the fact that the locks were being changed and pursuant to some specific advice on this matter obtained by the tenant. The tenant's position is that he was not able to pay the rent until the legal status of his tenancy was confirmed. The tenant also testified that discussions were entered into with the landlord to negotiate compensation for the tenant to relinquish the tenancy.

The landlord denied that any discussions of this nature had ever transpired.

The tenant is requesting that the Ten-Day Notice be cancelled. The tenant is also claiming compensation of \$1,000.00 for the landlord's actions affecting the tenant's family and forcing them to move.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act when rent is in arrears. I find that there is no dispute about the fact that the tenant owes some rental arrears and that the tenant failed to pay the rent owed within 5 days of receiving the 10-Day Notice. Payment of the rent within five days of receiving the

Notice would have served to automatically cancel the Notice. In this instance the debt was not paid.

Therefore, I find that the Ten-Day Notice still remains in effect. I find that this Notice is supported under the Act and, therefore, I have determined that the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the tenancy will end and the landlord is entitled to an Order of Possession under the Act.

In regard to the landlord's monetary claim for rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. (My emphasis)

Although I find that the tenant did not pay the rent when it was due, I also find that there is some doubt as to whether or not the landlord had properly served the tenant with both pages of the 10-Day Notice to End Tenancy for Unpaid Rent, as required under the Act.

The second page of the Notice provides the tenant with additional detailed information about the Act, including the rights and obligations of the parties. That being said, I find it clear that, despite the missing page, the tenant was not impeded in understanding that he could dispute the 10-Day Notice to End Tenancy for Unpaid Rent, as evidenced by the fact that the tenant did make an application for dispute resolution to challenge the Notice.

With respect to the amount of the landlord's monetary claim, I find that the rental arrears shown on the landlord's 10-Day Notice to End Tenancy for Unpaid Rent, dated November 11, 2013 is stated to be \$1,400.00. I find that this amount is not consistent with the landlord's testimony that the tenant was already in arrears for rent of \$1,400.00 for September 2013, \$1,400.00 for October 2013 and \$1,400.00 owed for November 2013, which would total \$4,200.00, not merely \$1,400.00 as shown on the 10-Day Notice.

For this reason, I find that the amount owed is in question. I hereby grant the landlord's request to retain the tenant's security deposit of \$700.00, but I must decline to award the remaining monetary portion of the landlord's claim, as the specific amount documented as outstanding in the evidence is not sufficiently clear.

With respect to the tenant's monetary claim against the landlord, seeking \$1,000.00, I find that an applicant's right to claim damages from another party is covered by section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must

compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the tenant has not offered sufficient evidentiary proof to justify the monetary compensation being claimed. Accordingly I find that the portion of the tenant's application seeking \$1,000.00 in monetary compensation must also be dismissed.

Based on the evidence before me, I hereby issue an Order of Possession in favour of the landlord **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.

Based on the evidence before me, I hereby grant the landlord \$700.00 to be satisfied by retaining the tenant's \$700.00 security deposit and dismiss the landlord's remaining monetary claim for rental arrears without leave to reapply.

Based on the evidence before me, I hereby dismiss the tenant's application in its entirety without leave to reapply.

I further order that each party is responsible for the cost of their own applications.

Conclusion

The landlord is partially successful in the cross application and is granted an Order of Possession and an order to retain the tenant's security deposit. The tenant is not successful in the cross application and seeking to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and monetary compensation and the tenant's application is dismissed without leave.

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: January 07, 2014

Residential Tenancy Branch

