



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 10 Day Notice cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on April 02, 2013 for a fixed term tenancy which is due to expire on September 30, 2014. Rent for this unit is \$1,550.00 per month and is due on the first day of each month in advance. The tenant paid a security deposit of \$775.00 and a pet deposit of \$775.00 on April 02, 2013.

The landlord testifies that the tenant has been continually late with rent for five out of the 13 months of this tenancy. The tenant failed to pay the rent for February on the day it was due and the tenant was served with a 10 Day Notice to End Tenancy on February 02, 2014. This Notice informed the tenant that \$1,550.00 was outstanding and must be paid within five days, or the tenancy would end on February 12, 2014. The tenant disputed the Notice within five days.

The landlord testifies that the tenant paid \$400.00 on February 05, \$400.00 on February 19, and \$100.00 on February 21, 2014. This left an outstanding balance of \$650.00 for February's rent. The landlord testifies that the tenant failed to pay rent for March on the day it was due. This took the rent arrears to \$2,200.00. The tenant did make a payment of \$250.00 on March 14, 2014 and a further payment of \$1,950.00 on March 27, 2014. The landlord seeks to amend the application, as to date all rent has now been paid. The landlord testifies that they still seek an Order of Possession and have agreed that the date can be extended to May 15, 2014.

The tenant agrees that she failed to pay rent on time and has failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant testifies that she was laid off work for three months and was waiting for EI to come through. The tenant testifies that she was open and honest about her situation with the landlord and has now gone back to work on March 04 and all the arrears have been paid-up.

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.

I find the landlord has established that the outstanding rent was not paid within the five allowable days after a 10 Day Notice was served upon the tenant under s.46(4)(a) of the *Act*. Although I accept that there is no outstanding rent at this time, as the tenant failed to pay all the outstanding rent within the five allowable days the 10 Day Notice remains in force and effect and the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

As there is no longer any rent outstanding I am not required to deal with the landlord's application for a Monetary Order. As the tenancy is continuing until May 15, 2014 I am not required to deal with the security deposit.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on May 15, 2014. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security and pet deposit

of \$1,550.00 leaving a balance \$1,500.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: March 27, 2014

Residential Tenancy Branch

