



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNR, MNSD, FF

Introduction

The tenant has applied for an order to cancel two notices to end the tenancy. The landlord requests an Order of Possession, and a Monetary Order for unpaid rent, and to retain the security deposit.

The tenant failed to attend the hearing. I accept that the tenant was properly served with the relevant notices, notice of this hearing, and evidence from the landlord

Issues to Be Decided

- Are either of the Notices to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant to the landlord?
- Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began June 15, 2013. Rent is due in advance on the last day of the previous month, in the amount of \$1,550.00. A security deposit of \$775.00 was paid. The tenant paid only \$450.00 rent for March, and on March 3, 2014 the tenant received a 10 day Notice to End Tenancy, for the unpaid rent, as well as a second notice for cause. The tenant disputed both notices, and did not pay any further rent.

(Note: A separate agreement was made regarding the parking of a school bus on the landlord's property, but that agreement and a deposit collected under that agreement was not a residential tenancy agreement, and I have no authority to deal with any dispute regarding that agreement and that deposit).

Analysis

A tenant must pay rent when it is due under the tenancy agreement, and the tenant in this case was required to pay his full rent for March, on or before the last day of February. When that rent was not paid in full, the landlord was entitled in law to serve the 10 day notice ending this tenancy, for non-payment of the balance of March's rent. Upon receipt of that notice, the tenant should have paid the rental arrears within the

required 5 day period, in order to have the tenancy continue. The tenant failed to do so, and his failure to attend the hearing and give any testimony results in the dismissal of the claim he filed to dispute the notice. The 10 day notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the notice is dismissed.

I accept the landlord's testimony that he will be unable to place a new tenant until at least the end of April, and that he will suffer a loss of rent for April, and I accept that the tenant is liable for this lost rental income. The landlord is entitled to an award of \$2,650.00 representing the rental arrears for March and loss of rent for April. The landlord may also recover his \$50.00 filing fee from the tenant. This results in a total sum of \$2,700.00 owed by the tenant to the landlord. As permitted under section 38 of the Residential Tenancy Act, the landlord is also entitled to retain the security deposit in partial satisfaction of this sum.

Given this outcome, the issues associated with the one month Notice to End Tenancy are now moot, and I need not address those in this ruling.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I order that the landlord retain the security deposit which totals \$775.00. I further order the tenant pay to the landlord the remaining sum owing of \$1,925.00 (\$2,700.00 less \$775.00).

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: April 10, 2014

Residential Tenancy Branch

