



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, OPC, OPB, CNR, CNC MNR, MT, MNSD, 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 and for a monetary order for unpaid rent, the filing fee and to retain the security deposit. The tenant applied for an order to cancel the notice to end tenancy. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy started on August 05, 2013. The monthly rent is \$900.00 and does not include utilities. Prior to moving in the tenant paid a security deposit of \$450.00.

The tenant failed to pay full rent on March 01, 2014 and owed the landlord \$800.00. On March 03, 2014, the landlord served the tenant with a notice to end tenancy for non payment of rent. The landlord filed proof of having served this notice by posting the notice on the tenant's door in the presence of a witness.

The tenant stated that she sent rent to the landlord in cash, by registered mail on March 17, 2014. The landlord stated that she received the registered mail but it contained a notice of hearing and the tenant's evidence. The landlord stated that there was no cash inside the envelope. The tenant argued that she had paid rent on April 03, 2014 to the landlord in person and filed a handwritten receipt. The landlord stated that the tenant did not pay rent for April, a receipt was not issued to the tenant and that there was no such receipt in the tenant's evidence package.

During the hearing the landlord stated that she wanted the tenancy to end immediately and would accept the security deposit of \$450.00 in full settlement of her claim.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Based on the sworn testimony of both parties, I find that the tenant is deemed to have received the notice to end tenancy for unpaid rent, on March 06, 2014. The tenant stated that rent for March was paid in cash sent by registered mail on March 17, 2014. Even if I accept the testimony of the tenant that rent for March was paid by mailing cash to the landlord on March 17, 2014, I find that the tenant did not pay rent within five days of receipt of the notice to end tenancy.

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.

I also find that the landlord is entitled to \$800.00 for unpaid rent for March 2014. As per the landlord's request, I allow the landlord to retain the security deposit in full settlement of her monetary claims for unpaid rent for March and April 2014.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. The landlord may retain the security deposit of \$450.00. 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: April 25, 2014

Residential Tenancy Branch

