



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on November 1, 2012. The tenancy agreement indicates the tenancy started on November 1, 2012 and the tenant is obligated to pay rent of \$850.00 monthly in advance on the first day of the month. The tenancy agreement also indicates the tenant was responsible to pay a security deposit of \$425.00.

The landlord gave evidence that the tenant did not pay the entire \$425.00 for his security deposit. The landlord's evidence is that the tenant paid about \$245.00 and did not pay the balance of \$180.00.

The tenant gave evidence that he has lived in the rental unit since before November 1, 2012; his evidence is that it has been almost three years. The tenant gave evidence that he is "pretty sure" he paid the entire security deposit. Asked whether he paid it in one or two parts, he said he "can't quite recall" the circumstances of the payment.

The landlord gave evidence that she served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") by personal service on March 10, 2014. The Notice indicates the tenant failed to pay rent of \$1,350.00. The landlord's evidence is that the tenant failed to pay \$500.00 owing for February 2014 rent and \$850.00 owing for March 2014 rent.

The landlord gave evidence that the tenant made one payment after the Notice was served; a payment of \$600.00 on March 21, 2014.

The parties agree that the tenant continues to occupy the rental unit. The tenant gave evidence that he made an additional payment of \$300.00 cash on March 7, 2014 and the landlord did not give him a receipt. Asked what denominations the cash payment was in, the tenant did not sound certain but said he thinks it was three 100 dollar bills.

The landlord denies that the tenant made an additional cash payment on March 7, 2014. Her evidence is that the tenant always made payments by depositing directly to her bank account. She provided a copy of her bank statement for the period February 11 to March 10, 2014 which shows a deposit of \$350.00 made on February 24, 2014 which she states was from the tenant. The landlord also says that she always gives her tenants a receipt for cash payments.

Analysis

I find the tenant received the Notice on March 10, 2014. I accept the landlord's evidence that the tenant made a further payment of \$600.00 on March 21, 2014. According to Section 46(5), if a tenant does not pay the rent or make application for dispute resolution within five days of receiving 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. In this case, the tenant did not pay the entire rent owing or dispute the Notice within five days. For that reason, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept both parties' evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend her Application for Dispute Resolution to include a claim for April 2014 rent and half of May 2014 rent. The landlord is also entitled to recover her RTB filing fee of \$50.00.

At issue is whether the tenant made an additional cash payment on March 7, 2014, and the amount of the security deposit currently being held by the landlord.

The parties disagree about whether the tenant made an additional cash payment on March 7, 2014. I prefer the evidence of the landlord on this point for three reasons. First, the landlord provided evidence that indicates the tenant made a February 24, 2014 payment of \$350.00 by depositing it to her bank account. This supports the landlord's assertion that the tenant always made his payments in that manner. I also found the tenant to be somewhat evasive in giving his evidence regarding the denomination of the cash payment. It seems implausible that the tenant would not be certain whether he gave the landlord three hundred dollar bills or some other denominations. I also find it implausible that the tenant gave the landlord cash without requiring that she write him a receipt in exchange for the cash. For these reasons, I find that the tenant did not give the landlord a cash payment of \$300.00 on March 7, 2014.

The parties also disagree about whether the tenant paid his full security deposit of \$425.00 or whether he only paid \$245.00 toward his security deposit. I prefer the evidence of the landlord on this point as well. The landlord was certain in giving her evidence that the tenant did not pay the remaining \$180.00 of his security deposit. The tenant's evidence was that he thought he paid the entire deposit, but he did not sound certain. He said only that he was "pretty sure" and that he couldn't quite recall the circumstances of the payment. I find the tenant paid a security deposit of \$245.00.

The amount due the landlord is therefore: \$1,350.00 (Notice amount) less \$600.00 (March 21, 2014 payment) plus \$850.00 (April 2014 rent) plus \$425.00 (May 2014 rent) plus \$50.00 (RTB filing fee), for a total due of \$2,075.00. I order that the landlord retain the security deposit of \$245.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,830.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order for \$1,830.00.

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: May 06, 2014

Residential Tenancy Branch

