



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Equitable Real Estate Investment Corp. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, PSF, RPP, RR, MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, an order compelling the landlord to perform repairs and provide services and an order authorizing the tenant to reduce his rent. The landlord filed a cross-application seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The tenant had an advocate who appeared in a support capacity and participated in the first 20 minutes of the hearing.

5 business days before the hearing, the tenant attempted to amend his application to include a substantial monetary claim by submitting this amendment as evidence. The tenant did not pay the additional filing fee which would have been required to amend his application to include a claim for more than \$5,000.00 and did not provide sufficient time for the landlords to adequately respond to the claim. Further, the monetary claim is not in my view sufficiently related to the primary claim, which is dealing with whether the tenancy should end and whether rent is owing. For these reasons, I refused to permit the amendment. The tenant is free to file his monetary claim in the future.

At the hearing, the landlord asked to amend their claim to include a claim for unpaid rent for May. The tenant acknowledged that he was responsible for rent for the month of May and for that reason, I allowed the amendment to the landlord's application.

Issues to be Decided

Should the notice to end tenancy be set aside?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2011 and that the tenant is obligated to pay rent in the amount of \$1,213.00 per month in advance on the first day of each month. They further agreed that the tenant paid a \$550.00 security deposit in December 2010.

The landlord claimed that the tenant did not pay rent in the month of March, although he had overpaid his February rent leaving a credit of \$132.75 thereby owing just \$1,180.25 for March. The tenant claimed that he paid his rent in cash by slipping it under the door of a room which he alternatively described as the boiler room, the maintenance room and the electrical room. The landlord denied having received this payment and testified that the tenant had never paid his rent in this manner before. The tenant claimed that he regularly paid his rent in cash by putting it under that door.

The parties agreed that on March 31 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The parties agreed that in April, the tenant gave the landlord a money order for \$1,300.00 and that soon after having given this money order to the landlord, he stopped payment on it. The tenant testified that he stopped payment because the landlord told him he could not have a roommate and he could not afford to pay rent without the assistance of a roommate.

The parties agreed that the tenant did not pay rent for May and that he also had not paid \$54.25 in laundry charges.

The tenant seeks to have the Notice set aside and an order that the landlord perform repairs, provide services and an order allowing him to reduce his rent.

The landlord seeks an order of possession and seeks to recover \$1,180.25 in unpaid rent for the month of March, \$1,213.00 in lost income for each of the months of April and May, two \$25.00 late payment fees for each of the months of March and April, a \$25.00 returned cheque fee for the April money order and the \$54.25 in laundry charges.

Both parties seek to recover their filing fees.

Analysis

When a landlord alleges that a tenant has failed to pay rent, the burden rests with the tenant to prove that rent has been paid. The tenant claimed to have placed cash under

a locked door, but he did not provide a witness statement, proof that he had withdrawn that amount of money just prior to the time he claimed to have made the cash payment and I am not satisfied that the tenant made this payment. I therefore find that the tenant has not met the burden of proving that rent was paid and I decline to set aside the Notice. 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 in the Supreme Court for enforcement.

I dismiss the tenant's claim in its entirety as he has been unsuccessful in his bid to set aside the Notice and as the tenancy will be ending, it is unnecessary to address the remainder of the claims.

I find that the tenant failed to pay rent in the months of March – May inclusive and I find that the landlord is entitled to recover \$1,180.25 in unpaid rent for the month of March, \$1,213.00 in lost income for each of the months of April and May. I further find that the landlord is entitled to recover 2 late payment fees of \$25.00 each, 1 returned cheque fee of \$25.00 and \$54.25 in laundry charges. As the landlord has been successful in their claim, I find that they should recover the \$50.00 filing fee paid to bring their application.

In summary, the landlord has been successful as follows:

March rent	\$1,180.25
April rent	\$1,213.00
May rent	\$1,213.00
Late payment charges x 2	\$ 50.00
Returned cheque fee	\$ 25.00
Laundry charges	\$ 54.25
Filing fee	\$ 50.00
Total:	\$3,785.50

I order the landlord to retain the \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$3,235.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession and a monetary order for \$3,235.50. The landlord will retain the security deposit.

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 30, 2014

Residential Tenancy Branch

