



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR, MNSD, MNDC, 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 and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties 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 landlord and tenant entered into a tenancy agreement on May 16, 2012. The rent is \$1,480.00 per month payable on the 16th of each month. Prior to moving in the tenant paid a security deposit of \$740.00. Both parties made application subsequent to a notice to end tenancy dated April 24, 2014 for \$1,480.00 in unpaid rent that was due on April 16, 2014.

The tenant testified that on April 17, 2014, he paid rent that was due on April 16, 2014. The tenant further testified that since then he has not paid any rent. The landlord argued that the tenant did not pay rent that was due on April 16 and therefore on April 24, 2014, the landlord served the tenant with a notice to end tenancy for \$1,480.00 in unpaid rent.

To support her testimony, the landlord referred to copies of text messages between the parties, which she had filed into evidence. These messages indicate that as of April 29, 2014, the tenant had not paid rent that was due on April 16, 2014. The tenant stated that his wife had sent the messages.

The landlord stated that as of the date of this hearing, the tenant also owes rent that was due on June 16 but later added that she did not mind forgoing rent for June, if the monetary order consisted of two months' rent that was due on April 16 and May 16 and that she was awarded an order of possession effective immediately.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. I prefer the testimony of the landlord and I find that the tenant did not pay rent on April 17 as stated by him during the hearing. Since the tenant failed to pay rent he was served with the notice to end tenancy on April 24, 2014.

The tenant also stated that he did not pay any rent after the alleged payment on April 17 and therefore I find that at the time of the hearing the tenant owed the landlord rent that was due on April 16, May 16 and June 16, 2014

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.

The tenant received the notice to end tenancy for unpaid rent, on April 24, 2014 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

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 find that the landlord has established her monetary claim, as per her request during the hearing, for the lesser amount of unpaid rent of \$2,960.00. Since the landlord has proven her claim she is also entitled to the recovery of the filing fee of \$50.00. I order that the landlord retain the security deposit of \$740.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$2,270.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,270.00**.

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: June 17, 2014

Residential Tenancy Branch

