



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord disputed that he was served in person with the tenant's hearing documents. The tenant's witness gave sworn testimony that she was present when the tenant served the landlord in person with documentation. The witness testified that she was not sure what the documents were but was with the tenant when the tenant collected her hearing documents from the access centre and then served these to the landlord. I find it is likely the landlord was served the tenant's application and Notice of Hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on March 25, 2013 for a month to month tenancy. Rent for this unit was \$600.00 per month and was due on the 1st day of each month. The tenant paid a security deposit of \$300.00 on March 25, 2013.

The landlord testified that the tenant failed to pay all the rent due on May 01, 2014. The tenant had an outstanding balance of \$125.00. The tenant failed to pay rent due of \$600.00 on June 01, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 28, 2014. The landlord testified that this was served to the tenant in person on May 28, 2014 and posted to the tenant's door on June 02, June 05 and June 07, 2014. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 06, 2014. The tenant did make a payment of \$125.00 on June 02, 2014. The rent for June of \$600.00 remains unpaid. Since that time the tenant has failed to pay rent for July and August to a total amount of \$1,200.00. The total amount of unpaid rent is now \$1,800.00.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant testified that she was not served in person with the 10 Day Notice on May 28, 2014. The tenant testified that she did not receive the 10 Day Notice on her door until June 07, 2014. The tenant applied to dispute the Notice on June 11, 2014. The tenant testified that she went to pay rent for June to a man working in the landlords shop but this man refused to accept the rent and swore at the tenant. The tenant

testified that she spoke to the landlord the following weekend but the landlord would not believe the tenant.

The tenant testified that she intended to pay the landlord with a Money Order and asked the landlord's employee for the correct spelling of the landlord's name but the landlord's employee would not provide this information. The tenant testified that she could not find her copy of the tenancy agreement showing the spelling of the landlord's name and had not transferred the landlord's phone number into her new address book so could not contact the landlord.

The tenant agreed that the landlord did work in his shop by the rental unit at weekends. The tenant testified that she was feeling very stressed out and did not go to see the landlord to pay her rent. The tenant does not dispute that she owes rent for June, July and August, 2014.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that there is outstanding rent for June, July and August, 2014 of \$1,800.00.00. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$300.00 in partial satisfaction of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,800.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$300.00)
Total amount due to the landlord	\$1,550.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. It is my decision that due to the discrepancies between the dates when the parties have testified that the Notice was served it is my decision that the Notice was served to the tenant and received on June 07, 2014 as the landlord has not meet the burden of proof that it was served in person on May 28, 2014. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door the tenant agreed it was received on June 07, 2014 and therefore the effective date of the Notice is amended to June 17, 2014 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice. As this date has since passed, I grant the landlord an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,850.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court.

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: August 18, 2014

Residential Tenancy Branch

