



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, MND, MNR, MNSD, MNDC, FF

Introduction

There were three related hearings. Two applications were set for hearing at 9:00 am. They were both the tenant's applications for orders setting aside notices to end tenancy: one a 10 Day Notice to End Tenancy for Non-Payment of Rent and the other a 1 Month Notice to End Tenancy for Cause.

The third application was the landlords' application for an order of possession, a monetary order, and an order permitting retention of the security deposit in partial satisfaction of the claim. That hearing was set for 9:30 am.

As the parties and circumstances are the same for all three applications, one decision will be rendered for all.

The landlords appeared at 9:00 am; the tenant did not. After receiving the landlords' evidence that they had served their application for dispute resolution, notice of hearing, and amended application for dispute resolution personally on the tenant I heard the landlords' evidence on all three applications. Based on the facts and reasons set out below I granted the landlords an order of possession and a monetary order.

The hearing concluded at 9:17 am. I told the landlord not to call in at 9:30 am.

I did call at 9:30 am. The tenant called at 9:38 am. She explained that she had put the wrong date in her calendar and she thought the hearings were set for October 9. I advised her that her applications had already been dismissed for her failure to appear and suggested she call the Residential Tenancy Branch for information on how to apply for a new hearing.

The tenant stated she was in the process of moving and thought she could be out of the rental unit by Sunday, October 12. I suggested that when she is served with the order of possession she talk to the landlords about a mutually satisfactory move-out date.

The tenant also mentioned some of the issues and evidence she had intended to raise in the hearing. I advised her that none of those issues were relevant to the applications to cancel the notices to end tenancy and that if she wanted to pursue those claims, she would have had to file a separate application for dispute resolution, which she can still do. I also reminded her that the only outcome of her applications was either the tenancy was continued, something she said she does not want, or the tenancy is ended.

Issue(s) to be Decided

- Are the landlords entitled to an order of possession and, if so, on what terms?
- Are the landlords entitled to a monetary order and, if so, in what amount?
- What order, if any, should be made regarding the security deposit?

Background and Evidence

This month-to-month tenancy commenced February 26, 2014. The monthly rent of \$950.00 is due on the first day of the month. The tenant paid a security deposit of \$475.00.

On August 2 the landlords issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant disputed the notice by filing an application for dispute resolution on August 6. Although she filed some material about her disputes with the landlords she did not file any evidence that showed:

- The August, September or October rents had been paid.
- She had an order from an arbitrator giving her permission to keep all or part of the rent.
- She had paid for emergency repairs (as defined by the *Residential Tenancy Act*.)

The landlords testified that no rent has been paid for August, September or October.

Analysis

Because the tenant did not appear at the date and time set for hearing of her applications they are dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

The landlords' claim for anticipated cleaning and repairs is dismissed. Arbitrators may only consider claims for actual damages, not anticipated damages. Any claim for cleaning and damages must be filed after the tenant has moved out and the actual state of the rental unit at the end of the tenancy is known.

I find that the landlords have established a total monetary claim of \$2900.00 comprised of unpaid rent for August, September and October in the amount of \$2850.00 and the \$50.00 fee paid by the landlords for this application. Pursuant to section 72 I order that the landlords retain the deposit of \$475.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$2425.00. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

Conclusion

An order of possession and a monetary order have been granted to the landlords.

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: October 08, 2014

Residential Tenancy Branch

