



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OPR, OPB, MNR, MNSD, MNDC, FF

Introduction

In the first application the tenant seeks to dispute an additional rent increase alleged to have been given in May 2014. In the second application the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy dated May 28, 2014, and an order of possession based on an alleged breach of an agreement with the landlord. The landlord also seeks a monetary award for unpaid rent and for damage or loss under the *Residential Tenancy Act* (the “Act”), regulations or tenancy agreement.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that either party is entitled to the relief requested?

Background and Evidence

The rental unit is a two bedroom home. The tenancy started in August 2012 on a month to month basis. The rent started at \$800.00 per month and the parties agree that the rent is presently \$832.00. The landlord holds a \$400.00 security deposit.

The landlord’s testifies that the tenant was repeatedly late paying his rent and, as a result, sometime prior to May 2014, the landlord issued a one month Notice to End Tenancy for repeated late payment, which went undisputed. She says the tenant was evicted, though it doesn’t appear that he moved out of the rental unit or was physically dispossessed. She indicates that the tenant then entered into a new tenancy agreement with her father the landlord for a monthly rent of \$1100.00 but the tenant

ultimately refused to sign a written agreement or provide requested post dated cheques. The tenant paid \$832.00 for May rent, \$1100.00 for June and \$1100.00 for July. He then paid \$300.00 for August and nothing since.

The landlord's daughter, the owner Ms. J.M. testified that the tenant had been receiving the benefit of a rent far below market rent for the first two years of the tenancy.

The tenant testified that he paid the money demanded in the ten day Notice within the time allowed.

Analysis

In regard to the tenant's application, it is apparent that he has already applied to dispute the increase but no one attended the hearing on July 29, 2014 and the application was dismissed (RTB file 251921). No leave was granted to re-apply and so his application here must fail.

The landlord has not contested the tenant's evidence that he paid the \$204.00 demanded in the May 28th ten day Notice. Payment within the five day time period automatically cancels the Notice. On the very vague evidence on this point, the landlord has not established that the Notice has not been cancelled by the undisputed payment and so I find the tenancy was not ended by that Notice.

The landlord also claims to end the tenancy based on breach of an agreement but there is no evidence of an official Notice to End Tenancy in that regard (as required under the Act) nor is it clear what agreement is being spoken of. For these reasons the landlord's claim to an order of possession must be dismissed.

The landlord claims a monetary award for \$2944.00. That amount would appear to be based on the rent of \$1100.00 per month. In light of the fact that the parties agreed the rent is \$832.00, I am left to speculate on how the \$2944.00 figure was reached.

I find that the monthly rent is presently \$832.00 due on the first of each month. I do not know if there remains an outstanding balance for August rent and so I decline to make any firm monetary order against the tenant at this hearing, but as of the hearing no monies had been paid for September or October.

I intend to leave this to the parties to calculate, based on these findings. The landlord is entitled to issue a new ten day Notice if the tenant does not pay what the landlord

calculates to be the past due money forthwith or as agreed otherwise and to apply for a monetary award.

In light of these findings I make no order for recovery of the filing fee.

Conclusion

The tenant's application is dismissed. The landlord's application is dismissed.

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 10, 2014

Residential Tenancy Branch

