



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony, and the landlord has provided evidentiary material. The parties were given the opportunity to cross examine each other on the testimony, all of which is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on August 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable in advance on the 1st day of each month. The tenancy was to be a fixed term and the landlord left a tenancy agreement with the tenant to sign, but the tenant didn't return it. At the outset of the tenancy the landlord collected a security deposit from the tenant in

the amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$1,390.00 including rent for the month of November, 2014. About the 1st week of September, 2014 the tenant made a partial payment for rent in the amount of \$260.00 and promised to pay the balance but didn't. On September 23, 2014 the landlord personally posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit. A copy of the notice has been provided and it is dated September 23, 2014 and contains an expected date of vacancy of October 2, 2014 for unpaid rent in the amount of \$290.00 that was due on September 1, 2014. Both pages of the 2-page form have been provided. The name of the landlord on the notice is a different name entirely from the landlord named in the Landlord's Application for Dispute Resolution. The landlord testified that there are a number of family members who reside in the upper unit of the rental house and the person looking after the tenancy at the time the notice was issued is no longer dealing with the tenancy and the landlord named in the application has taken over. The rental unit is a basement suite in that house.

The landlord also testified that no rent has been collected since the issuance of the notice. For the first month the tenant paid rent in cash but the landlord did not issue a receipt because it was difficult to reach the tenant with the work schedules of the parties. The landlord believes he gave the tenant a receipt for the security deposit, but not for the \$260.00 payment made in September. The landlord subsequently gave the tenant a Direct Deposit form to fill out so that rent could be paid without the necessity of the parties getting together.

The tenant testified that he told the landlord that he needed receipts because the tenant works and is on a disability for a heart condition. His rent gets paid by the Ministry but the landlord wanted cash which was difficult for the tenant to do.

The tenant further testified that he didn't sign the tenancy agreement because it stated a fixed term for 8 months and the tenant hadn't agreed to that. Also the tenancy agreement specified payment in cash which also wasn't agreed to. The tenant couldn't talk to the landlord about it due to their work schedules.

In September the tenant paid for half a month's rent and explained to the landlord that he needed the receipts in order to get the rent paid. The tenant also testified that the landlord has not been giving the tenant his mail. The landlords live in the upper unit of the house and the rental unit is a basement suite in the same house. The tenant's worker advised the tenant that forms he needs for his therapy to take to the doctor have

been mailed to the tenant, and the tenant called the landlord who said that he had mail. The tenant went to collect it but another gentleman argued with the tenant and denied having any mail.

The tenant also testified that he paid \$350.00 to one of the landlords in the garage, and that there are about 6 people living in the upper unit of the landlord. He agrees that he currently owes \$290.00 for September, \$200.00 for October and \$550.00 for November, 2014 rent, for a total of \$1,040.00. He keeps asking for receipts but hasn't received any from the landlord.

The tenant also denies that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental unit stating that it must have been posted to the wrong door. If he had received the notice, he would have taken it to the Ministry who would have paid the rent right away. The tenant has received 2 notices, not in any form, which were both found at the same time. The tenant has not provided copies but testified that he was reading from those notes, and the first says:

"You have been evicted and have failed to move out on the date you were told.

At the end of the week the door lock will be changed Oct 13 at 9:00. Anything still inside will be put out on the street. Landlord"

The other says:

"Reminder you have 4 days remaining to move – lock will be changed
Mon Oct 13 @ 9 a.m."

The tenant testified that the only other documentation he has received was the notice of this hearing which was delivered to him by one of the landlords in the upper unit.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full or dispute the notice within 5 days. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out 10 days after service.

In this case, the tenant denies ever being served with the notice, and testified that the only notices he received are the ones he read into the hearing. I have reviewed the notice and I find that it is in the approved form and I am satisfied that it was issued by a landlord. However I also note that the effective date of vacancy is October 2, 2014 which contradicts the notes the tenant found on the door. In the circumstances, I am not satisfied that the landlord has served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but did serve the notices described by the tenant, which are not

approved. Therefore, the landlord's application for an Order of Possession is hereby dismissed and the tenancy continues.

With respect to the monetary order, the tenant admits owing the landlord \$1,040.00. Therefore, I hereby grant a monetary order in favour of the landlord in that amount.

It appears that all the landlord had to do to collect rent is provide a receipt. The landlord does not deny that receipts haven't been issued for all payments made by the tenant, and the landlord has not been successful in obtaining an Order of Possession. In the circumstances, I am not satisfied that the landlord is entitled to recovery of the filing fee.

The *Residential Tenancy Act* permits me to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations or the tenancy agreement. The *Act* also states that a landlord must issue receipts for any rent or other payments made by a tenant in cash, and I order the landlord to do so.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by providing the tenant with receipts for all payments made by the tenant in cash.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,040.00.

These orders are final and binding and may be enforced.

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: November 10, 2014

Residential Tenancy Branch

