



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

This hearing is a re-hearing of a matter that was originally heard on September 8, 2014 in which the landlord was granted an order of possession and a monetary order. The tenant applied for a review of that decision and was granted a new hearing which was scheduled for November 3, 2014. Neither party attended that hearing and the original decision and orders were confirmed. The tenant applied for a review of the second decision as the Residential Tenancy Branch had mistakenly sent the notice of the re-hearing to an incorrect address and a new hearing was granted. The hearing on December 23, 2014 was the new hearing. The landlord claimed that the tenant had not served him with notice of the new hearing and that he found out the hearing was scheduled when he telephoned the Residential Tenancy Branch for information. The tenant claimed that his counsel had served the landlord with notice of the hearing by registered mail. As the landlord was in attendance at the hearing and was prepared to proceed, I continued with the hearing.

The tenant claimed that his counsel had served the landlord with documentary evidence via registered mail. The landlord denied having received that evidence. As the tenant did not produce his counsel to testify that he had served the evidence in question and as the tenant had no evidence such as a tracking number to corroborate his claim that his counsel had served the landlord with his evidence, I declined to consider that evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

Virtually all of the facts are in dispute. The landlord claimed that on February 24 he was working at the rental unit performing repairs and was told by the hydro company that the tenant had opened up an account at the house. The landlord claimed that the tenant moved into the rental unit without his approval and throughout March and April he noticed that someone was sleeping in the unit and their possessions in one room of the unit. The landlord claimed that in April, he spoke with the tenant and offered to rent the unit to him for \$1,000.00 per month. He claimed that he submitted shelter information to social services but was told by that agency that the tenant had not arranged with them to rent the unit.

The parties agreed that on May 4, the landlord posted on the door of the rental unit a letter to the tenant advising that he was trespassing and ordering him to vacate the unit. On June 18, the landlord had locks installed and contacted the RCMP. The next day, the RCMP attended the unit and spoke with the tenant, after which they advised the landlord that because the tenant claimed he was a tenant, they could not force him to leave.

The landlord testified that on June 20, he sent the tenant a registered letter with a 10 day notice to end tenancy for unpaid rent (the "Notice") and also posted a copy of the Notice on the door of the rental unit.

The tenant claimed that in early February 2014, he spoke with the landlord about renting the unit and the parties agreed that rent would be set at \$600.00 per month and that the tenant could perform repairs in lieu of rent. The tenant further claimed that they agreed that rent would increase to \$1,000.00 per month when the unit was completed. He claimed that he went to a home improvement store with the landlord at which time the landlord purchased painting materials and a bathtub surround and that the tenant worked on the unit performing repairs throughout March and April. The tenant claimed that at the end of April, the landlord told him to stop working on the unit as the tenant was "doing too good a job" instead of just "slapping things together". At some point, the tenant drafted an agreement which stated that the landlord agreed to pay the tenant \$20.00 per hour for labour and would deduct this labour from a monthly rent of \$600.00. The agreement further stated that rent would increase to \$1000.00 per month when the tenant found a roommate. The landlord refused to sign this agreement.

The tenant claimed that he did not receive a copy of the Notice on his door and testified that he does not have the key to the mailbox, so he did not receive any registered mail. The landlord agreed that the tenant did not have a key to the mailbox, but claimed that the tenant could obtain a key at any time if he simply brought his hydro bill to Canada

Post to show that he paid hydro at the rental unit. The tenant testified that Canada Post would not provide him with a key without the landlord's express authorization.

The tenant produced a witness, L.W., who claimed that he witnessed the conversation between the landlord and tenant in February in which the landlord agreed to rent the unit to the tenant for \$600.00 per month which he could work off. L.W. also claimed that the landlord and tenant also agreed that the tenant would hire L.W. to do work as L.W. was a professional contractor. L.W. further claimed that the parties agreed that the tenant's work would be valued at \$20.00 per hour and that the landlord would supply all materials. L.W. testified that he had done a significant amount of work on the unit, including installing a hot water tank, putting in electrical outlets and painting. He claimed that he had put in approximately 60 hours of labour for which he had been only partly paid by the tenant.

The landlord seeks an order of possession based on the Notice and a monetary order for \$7,223.87 which represents \$133.33 in prorated rent for 4 days of occupation in February and \$1,000.00 in rent for each of the months of March – September inclusive as well as utilities.

Analysis

The landlord has provided testimony which stretches credibility to the breaking point. He claimed that he discovered that an unknown person had put the hydro for the rental unit into their own name and then in March, began residing in the unit. The landlord would have me believe that upon discovering that someone was squatting on the property, he approached them about renting the unit rather than immediately contacting the police. The landlord also claimed that although this person was trespassing and had not paid him for rent either through currency or labour, he and his contractor continued to perform improvements on the unit. I do not believe the landlord. I find it impossible to believe that a property owner would not immediately report a trespasser and even more unlikely that they would approach a trespasser about renting the unit.

The tenant's testimony is more believable, but lacks credibility on a number of points. The tenant claimed that he did not move into the unit until April but agreed that he put hydro into his own name in February. I find it highly unlikely that the tenant would have any interest in paying hydro costs while he was not residing in the rental unit. The tenant's evidence was also inconsistent in that he verbally claimed that rent was to increase to \$1,000.00 per month when the renovations to the rental unit were completed but the agreement he drew up and asked the landlord to sign stated that rent would increase when the tenant found a roommate.

In order for the landlord to succeed in his claim for unpaid rent, he must prove that the parties had an agreement that rent would be paid. I find on the balance of probabilities that the tenant was never a squatter or trespasser on the property, but that the parties entered into an agreement whereby the tenant agreed to do work in lieu of \$600.00 per month in rent. I have determined that the amount was \$600.00 because both parties agreed that some amount was payable and this is the amount that the tenant acknowledged was payable. I find it more likely than not that the parties agreed that the tenant could perform labour to work off at least part of the rent, but I find that the tenant has provided insufficient evidence to prove that he indeed performed that labour. Both the tenant and his witness claimed that they performed a considerable amount of work and stated that the witness was a professional contractor, yet no professional invoices were submitted into evidence and no photographs or receipts for materials purchased were submitted to show the work performed or materials acquired. I find that the tenant has failed to prove that he performed labour at the rental unit and I therefore find that he was obligated to pay \$600.00 in rent for each month he resides in the rental unit.

The landlord seeks to recover rent from February 24 even though he testified that the tenant did not move into the unit until March. The tenant claimed that he did not move into the unit until April but acknowledged having paid hydro in March. I find it more likely than not that the tenancy began in March and I therefore find that the tenant was obligated to pay \$600.00 for each of the months from March – September inclusive. I award the landlord \$4,200.00.

In order to succeed in his claim for an order of possession, the landlord must prove that the tenant failed to pay rent when it was due and must also prove that he served the tenant with a notice to end tenancy. The landlord claimed to have served a copy of the Notice via registered mail, but testified that he was well aware that the tenant did not have access to the mailbox. I find it unlikely that Canada Post would give a mailbox key on the strength of a hydro bill as claimed by the landlord and in any event, I find that the landlord, not the tenant, had the obligation to obtain a key to the mailbox for the tenant. I find that the landlord rebutted the presumption of service by registered letter as the tenant did not have access to the mailbox.

The landlord also claimed that a friend posted the Notice on the door of the rental unit. The tenant denied having received the Notice on the door and the landlord did not produce his friend to testify that the Notice was posted. As I had no direct testimony before me from the party who posted the Notice, I am unable to find that the landlord posted the Notice on the door and I find that the tenant did not receive the Notice. For that reason, I find that the landlord is not entitled to an order of possession and I dismiss that claim. If rent remains unpaid, the landlord is welcome to serve the tenant with

another notice to end tenancy and pursue an order of possession on the strength of that notice.

Conclusion

The claim for an order of possession is dismissed. I grant the landlord a monetary order under section 67 for \$4,200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision and order replace the decision and orders issued on September 8, 2014. The September decision and orders are set aside and of no force or effect.

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: December 29, 2014

Residential Tenancy Branch

