



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, LAT, OLC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order authorizing the tenant to change locks and directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing the landlord requested me to apply the security deposit towards the amount of rent owed.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to the remedies he has applied for?

Background and Evidence

The tenancy started on October 15, 2014. There is no written tenancy agreement. The parties agreed that the monthly rent is \$1,300.00 payable in advance on the 15th of each month and does not include utilities and that prior to moving in the tenant paid a security deposit of \$650.00. The landlord provided the tenant with a receipt for the amount of the security deposit and rent for the period of October 15 to November 15, 2014.

The landlord stated that the tenant failed to pay rent on November 15, 2014, December 15, 2014 and January 15, 2015. The tenant agreed that he failed pay rent on December 15 and January 15 but argued that he had paid rent in cash to the landlord on November 15, 2014. The tenant also stated that the landlord did not provide him with a receipt and instructed him to pay rent in cash only. The landlord denied having demanded rent in cash only. The tenant did not file any documentary evidence to support his claim of having paid rent on November 15, 2014.

On December 21, 2014, the landlord served the tenant with a notice to end tenancy effective December 31, 2014 for \$ 2,600.00 in unpaid rent. The tenant disputed the notice in a timely manner but did not pay the outstanding rent.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on December 21, 2014 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The parties disagreed on the payment of rent that was due on November 15, 2014. Both parties agreed that the tenant runs a business out of the rental unit. Based on a balance of probabilities, I find that it is more likely than not that the tenant paid rent on November 15, 2014, so as not to put his livelihood in jeopardy. As agreed to by the tenant, I find that the tenant did not pay rent that was due on December 15, 2014 and January 15, 2015. Accordingly, I find that the tenant owes the landlord \$2,600.00 in unpaid rent.

Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00. At the landlord's request, I will deduct the amount of the security deposit of \$650.00 from the landlord's established entitlement of \$2,650.00.

Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$2,000.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the notice to end tenancy is upheld and the tenancy is ending, the tenant's application for an order authorizing the tenant to change locks and directing the landlord to comply with the *Act* is moot and accordingly dismissed. The tenant has not proven his case and must also bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,000.00**.

The tenant's application is dismissed in its entirety.

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: January 20, 2015

Residential Tenancy Branch

