



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR, MNSD, 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 landlord also applied to retain the security deposit. The tenant applied for an order to cancel the notice to end tenancy. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

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 and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on June 12, 2011. The tenant paid a security deposit of \$250.00. The rent is \$500.00 per month due on the first day of each month.

The tenant agreed that he was \$20.00 short on rent for a few months but was not sure of the exact amount he owed the landlord. The tenant believed that he owed the landlord \$80.00 for unpaid rent from months prior to January 01, 2015. The landlord stated that the tenant owed \$300.00.

The tenant stated that on December 18, 2014, he paid rent for January in the amount of \$420.00 and agreed that he was \$80.00 short of the full amount. On January 02, 2015, the landlord served him with a 10 day notice to end tenancy for \$380.00 in unpaid rent. The tenant disputed the notice in a timely manner and stated that he did not owe the landlord \$380.00. The tenant stated that he paid \$80.00 that was owed for January shortly after he received the notice. The landlord stated that the tenant made payment in two installments of \$40.00 each on January 13, 2015 at 5:00 and 8:10 pm. The landlord provided a statement of amounts and dates of rent paid by the tenant.

The landlord is claiming \$300.00 in unpaid rent plus \$50.00 for the filing and has applied for an order of possession effective two days after service on the tenant.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on January 02, 2015 and did not pay rent within five days of receiving the notice to end 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.

Based on the testimony of both parties, I find that the landlord did not serve the tenant with his evidence regarding the amount of rent owed from months prior to January 01, 2015. Accordingly I accept the tenant's testimony that he owed \$80.00 instead of \$300.00 as claimed by the landlord. Since the landlord has proven his case, I award him the recovery of the filing fee of \$50.00. Overall the landlord has established a claim of \$130.00. I order the landlord to retain this amount from the security deposit and return the balance of the security deposit to the tenant after the tenancy ends, in accordance with s.38 of the *Act*.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant. I also allow the landlord to retain \$130.00 from the security deposit. 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 28, 2015

Residential Tenancy Branch

