



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant.

The landlord applied for an order of possession and a monetary order for rent owed, based on the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord also seeks compensation for utilities owed.

The tenant applied for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession and a monetary order for rent?
- Is the landlord entitled to be compensated for utilities owed?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order cancelling the Notice to End Tenancy?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on September 1, 2014. The current rent is \$2,600.00 per month payable on the 1st day of each month and a security deposit of \$1,300.00 was paid.

In evidence were copies of the tenancy agreement, the Ten Day Notice to End Tenancy for Unpaid Rent showing that, as of January 10, 2015, the tenant was in arrears for \$4,200.00 in rent. The Notice also indicates that the tenant owes \$1,035.94 in utilities for which a written demand was made on January 10, 2015.

The landlord stated that the tenant had usually paid the rent by certified bank draft during the tenancy. The landlord testified that on December 1, 2014, no rent was paid and after communications with the tenant over a period of time, the landlord met with the tenant at a worksite location on December 15, 2014. The landlord testified that at that time the tenant gave them a partial payment of rent owed for the month of December 2014 in the amount of \$1,000.00, in cash. According to the landlord, he was not prepared to give a receipt for the payment as he usually received the funds in a bank draft form. The landlord stated that, after this payment, they made repeated attempts to collect the remaining \$1,600.00 for December 2014 from the tenant without success.

The landlord testified that the tenant then failed to pay any rent for January 2015, and their attempts to discuss the matter with the tenant were not successful. The landlord testified that they issued a 10 Day Notice to End Tenancy for total rent owing of \$4,600.00.

The tenant's testimony confirmed that the tenant had made a late payment of \$1,000.00 towards the December rent after the due date of December 1, 2014. However, the tenant stated that they again met with the landlord sometime near the end of December in front of a witness. According to the tenant, at that time they paid the remainder of \$1,600.00 in cash for December rent. The tenant did not recall the exact date of the second partial payment. The tenant stated that their witness was not available to attend the hearing to give testimony. The tenant testified that it was the landlord who had insisted that they pay the rent in cash because of some tax difficulties that the landlord was apparently facing with Revenue Canada.

In regard to January rent, the tenant testified that they also met with the landlord's brother at a restaurant sometime in early January and paid \$2,600.00 full rent in cash, for which they were never given any receipt. The tenant called his co-tenant as a witness and the co-tenant stated that they had witnessed the \$2,600.00 cash payment made to a person who was the landlord's brother, but could not recall the exact date.

The tenant acknowledged that they failed to pay the rent due on February 1, 2015, but stated that they intended to vacate within the next few days. The tenant is requesting that the Ten-Day Notice be cancelled.

In regard to the claimed utility arrears, the landlord testified that the tenant failed to place utilities in their name as required under the tenancy agreement and the landlord was being billed for the usage. The landlord acknowledged that their written demand for utility payment was not issued to the tenant until January 10, 2015, the same date the 10 Day Notice to End Tenancy for Unpaid Rent was issued and served.

The tenant testified that they were never given a utility bill to pay at any time during the tenancy.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears. I find that there is no dispute about the fact that the tenant owed rent beyond December 1, 2014 and made a partial payment of \$1,000.00 towards the December rent.

Although the tenant's testimony was that the \$1,600.00 remaining rent owed for December 2014 was paid in cash sometime later, close to the end of December 2014, I find that the tenant offered no proof other than their disputed verbal testimony that the funds were paid to the landlord in cash and in front of a witness, who did not appear at the hearing.

In regard to the tenant's disputed verbal testimony regarding alleged payment of January rent of \$2,600.00 sometime early in January 2015, I find it unlikely that these tenants drove to restaurant to hand over \$2,600.00 in cash to an agent of the landlord without knowing his name, without remembering the date and without first demanding a receipt as a condition of payment.

Based on the evidence before me, I find on a balance of probabilities that the tenants are still in arrears for \$1,600.00 rent owed for December 2014 and \$2,600.00 rent for January 2015. I find that the tenants have also failed to pay \$2,600.00 rent owed for February due on February 1, 2015, for total outstanding arrears of \$6,800.00.

I find that the Notice for Unpaid Rent is supported under the Act and all criteria to terminate the tenancy under the Act have been met. For this reason I find that the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the utilities owed, I find that the Act provides that utilities do not become arrears in rent until 30 days after the tenant is served with written notification of the bill.

Therefore, I dismiss the landlord's claim for \$1,035.94 in utilities with leave to reapply as it is premature.

I find that the landlord is entitled to monetary compensation of \$6,850.00, comprised of \$6,800.00 accrued rental arrears and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$1,300.00 security deposit in partial satisfaction of the claim, and hereby issue a monetary order to the landlord for the remainder of \$5,550.00.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court. This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order and an Order of Possession. The portion of the landlord's application regarding the claim for utilities owed is dismissed with leave to reapply. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled is dismissed without leave.

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: February 03, 2015

Residential Tenancy Branch

