



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and relevant testimony in respect to the application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

I do not have benefit of the tenancy agreement, however, the parties agree the tenancy began in January 2010 and that rent is in the amount of \$623.00 payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$300.00. The tenant failed to pay rent for the month of January 2015 and on January 06, 2015 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant acknowledged receiving the notice to end on January 06, 2015 along with the landlord's *notice to enter* the unit the following day, which the landlord explained was for the purpose of inspecting the unit.

The tenant testified that they collect disability benefits and that from the outset of the tenancy their benefits provider has paid the landlord the rent directly in advance, but that in December 2014 this did not occur, and into early January 2015 the tenant did not possess enough money to pay the rent in full. However, on receiving the 10 Day Notice they prepared to pay their rent to the landlord directly the following day, in concert with the *notice to enter*, however the landlord did not attend the unit as notified. The landlord testified that the sole means available to the tenant to pay the rent arrears was to personally attend at the landlord's office in the building next door. The tenant testified that they attended the landlord's office on the 4th day after receiving the notice to end with full rent payment in hand/cash - having been notified the landlord would not be in the office until that day. They testified that when they arrived mid-morning they were advised by the maintenance person that the landlord representative "has left", and they did not want to leave their rent to anyone but the landlord. The landlord testified they likely left the office to do some rental unit showings, but would have returned that day. The tenant testified the following day - a Sunday - was the last day to pay the rent and the landlord's office was closed, and had no other avenue available to pay the rent. The tenant did not file for dispute resolution and the landlord claims the tenant did not contact them by telephone. The tenant testified that the rent for January 2015 remains available and that rent for February 2015 has not been paid only because it is being held by their benefits provider awaiting the outcome for the tenancy. The tenant testified that effectively all unpaid rent remains available to be satisfied.

Analysis

Based on the landlord's document evidence and the testimony of both parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice conforms to Section 52 (*Form and content of Notice to End*). The tenant, in actuality, has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. However, I accept the parties' complementary testimony as to the events of this matter and accept the tenant's version of events they tried to tender their rent in accordance with the Notice to End and the Act via the sole method available, without success. I have not been presented with evidence to support the tenant did not try to pay the rent and I have not been presented evidence the landlord frustrated the process to do so. However, it would be unfair to conclude that solely the tenant should bare all the eventual consequences as if they acted with indifference. I have also not been presented with evidence of a history of rent arrears or late payments over the 5 year span of the tenancy. Under the circumstances I find it is appropriate to set aside the 10 Day Notice to End; and, that the landlord is entitled to all unpaid rent. None the less, the tenant is cautioned that they have come perilously close to losing their tenancy and that further lapses in payment of the rent may support a notice to end for repeated late payments of rent.

I find the landlord has established a monetary claim for unpaid rent for January and February 2015. The landlord is also entitled to recover the \$50.00 filing fee for this matter.

Calculation for Monetary Order

Unpaid rent for January and February 2015	\$1246.00
Filing Fee	50.00
Total Monetary Award to landlord	\$1296.00

Conclusion

I Order the Notice to End for this matter **is set aside** and the tenancy continues.

I Order that the landlord retain **\$50.00** of the tenant's security deposit in satisfaction of the filing fee; and, **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$1246.00**. **The tenant is ordered** to satisfy the outstanding amount forthwith. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 18, 2015

Residential Tenancy Branch

