



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, CNR, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of rent, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenant's application for an order setting aside the notice to end tenancy.

The tenant did not appear at the beginning of the hearing. I heard the landlord's affirmed testimony and was in the process of giving my orders when the tenant joined the hearing. I then hear the tenant's affirmed testimony and the rebuttal evidence of the landlord before reserving my decision.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated March 4, 2015, valid?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced August 1, 2015. The monthly rent of \$650.00 is due on the first day of the month. The tenant paid a security deposit of \$325.00.

The tenant wanted the landlord to make certain repairs to the rental unit so on March 2 he told the landlord he would not pay the March rent until she addressed his issues. On March 4 the landlord issued and served him with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant went to the Residential Tenancy branch and discovered that he was not allowed withhold rent.

The landlord says the tenant wanted her to sign an undertaking that she would address the repair issues. She says she drafted and signed a document on March 6. She also

said that the tenant did not sign the document. The tenant says he paid the March rent in full on March 7 and they both signed the document. He testified that he never received a receipt for the payment. The landlord testified that the tenant did not pay the March rent. A copy of the agreement was not filed in evidence.

The tenant says that up to and including March he paid the rent in cash and that he received a receipt for every payment except the March payment. The landlord filed copies of these receipts.

The tenant testified that he gave the landlord a cheque for the April rent but as of the date of the hearing it appeared that the cheque had not been deposited because it had not cleared his bank account. The landlord testified that she did not receive any payment for April.

The tenant testified that he has found a new place for May 1. The landlord would like him out sooner.

Analysis

The only issue is whether the tenant paid the March rent by cash or not. The parties gave conflicting oral testimony on this point.

Usually when this issue arises the landlord has a history of never giving receipts for cash payments and is not able to produce any receipts for prior payments. In those cases, I always find in favour of the tenant's version of events because the landlord is not able to prove they had a practise of providing receipts for cash payments as required by the statute. In this case, the evidence is that the landlord gave receipts for all previous cash payments and she has filed copies of those receipts in evidence.

Further, the tenant knew the importance of being able to prove that he had paid the arrears of rent within five days of being served with the 10 Day Notice to End Tenancy. He could have taken a number of steps to ensure that he had proof of any payment made such as paying by cheque, paying by money order, or preparing a simple receipt and having the landlord sign it at the time of payment. He did not take any of those measures.

I find that these two factors tip the balance of probabilities in favour of the landlord's version of events.

Accordingly I find that the tenant did not pay the March rent within the required time period and that the 10 Day Notice to End Tenancy for Non-Payment of Rent dated

March 4, 2015 is valid. The landlord is granted an order of possession effective two days after service.

The tenant's evidence is that the cheque he says he gave the landlord for the April has not cleared his bank account. Accordingly, I find that the landlord has not received payment of either the March or April rents, a total of \$1300.00.

In addition, the landlord is entitled to reimbursement of the \$50.00 fee she paid to file her application.

I order that the landlord retain the security deposit of \$325.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1025.00.

Conclusion

- a. An order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order, as calculated above, has been granted to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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: April 23, 2015

Residential Tenancy Branch

