



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, DRI, 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 pursuant to a notice to end tenancy for nonpayment of rent. The landlord also applied for a monetary order for unpaid rent. The tenant applied for an order to cancel the notices to end tenancy and to dispute a rent increase. Both parties applied for the recovery of the filing fee.

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 and a monetary order for unpaid rent?

Background and Evidence

This month to month tenancy started on February 19, 2015. The rental unit consists of a one bedroom suite located on lower level of the home. The landlord lives upstairs and rents the entire house from the owner. The landlord sublets the suite in the lower level to this tenant.

Both parties agreed that at the time the tenancy agreement was signed, the occupant named on the tenancy agreement was a single person. The rent was set at \$1,000.00, due on the first of each month and included utilities. The tenant moved in on February 19, 2015 and paid \$250.00 towards rent for the remainder of February. The tenant also paid a security deposit of \$500.00.

The landlord stated that shortly after the tenant moved in, she noticed that there were additional persons living in the rental unit. The landlord questioned the tenant about the additional occupants and he informed the landlord that they were his parents and that they would be living in the rental unit.

The landlord requested the additional tenants to sign the tenancy agreement and the agreement was amended on February 22, 2015 to include the parents of the tenant. The landlord explained that since utilities were included in the rent, the rent would be increased by \$200.00. The tenants initialled the changes to the tenancy agreement.

The landlord stated that the rent cheque for March dated March 01, 2015 in the amount of \$1,200.00 was returned for insufficient funds. The landlord was notified by her bank on March 04, 2015. The tenant agreed that he did not have sufficient funds and on March 05, 2015, paid the landlord \$1,000.00 with a promise to pay the balance of \$200.00 the next day.

The landlord stated that the tenant's father refused to pay the balance the next day and as of the date of the hearing owed \$200.00 for March.

On March 14, 2015, the landlord served the tenant with a ten day notice to end tenancy. The tenant applied to dispute the notice in a timely manner but did not pay the balance of rent and also failed to pay rent on April 01, 2015. At the time of the hearing, the tenant still owed \$200.00 for March and \$1,200.00 for April 2015.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on March 14, 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 on or before 1:00 pm on May 31, 2015. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$1,400 for unpaid rent. Since the landlord has proven her case she is also entitled to the filing fee of \$50.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of 1,450.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has applied to dispute a rent increase. Based on the testimony of both parties and the copy of the tenancy agreement filed into evidence, I find that the tenant moved two additional occupants into the rental unit whose names were not included in the original tenancy agreement. The tenancy agreement was amended on February 22, 2015 and the tenant initialled the amended terms.

Since utilities were included in the rent, the rent was adjusted to accommodate the additional tenants. Therefore I find that the landlord did not serve a rent increase on the tenant. The rent was adjusted after the tenant added additional occupants to the tenancy agreement. In addition the tenant signed in agreement of the amended terms and also provided the landlord with a rent cheque in the amended amount.

Based on the above, I find the tenant's application to dispute a rent increase must be dismissed. Since the tenant has not proven his case, he must bear the cost of filing his own application.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 pm on May 31, 2015. I also grant the landlord a monetary order in the amount of **\$1,450.00**.

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: April 30, 2015

Residential Tenancy Branch

