



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNDC, FF

For the tenant – CNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the landlord withdrew his claim for a Monetary Order for unpaid rent and for money owed or compensation for damage or loss.

The female tenant and landlord' agents attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant testified that they had provided documentary evidence prior to the hearing; however no documentary evidence was received by either the landlord or the Arbitrator. The tenant confirmed receipt of the landlord's evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for unpaid rent?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this tenancy started on August 01, 2013 for a one year fixed term. The tenancy then reverted to a month to month tenancy. Rent for this unit is \$1,500.00 per month and is due on the 1st of each month.

The landlord testified that the tenant failed to pay all the rent due between August, 2013 and May, 2015 and owes an amount of \$10,900.00. The landlord testified that the tenants were served a 10 Day Notice to End Tenancy for unpaid rent on April 03, 2015. The Notice stated that the tenants owed \$10,900.00; however, the landlord testified that he had also included unpaid rent for May on the Notice when in fact May's rent was not due at the time the Notice was served. The landlord testified that the tenant actually owed \$9,400.00 on April 01, 2015. The Notice was served upon the tenants by posting it to the tenants' door on April 03, 2015. The Notice informed the tenants that the tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 13, 2015. The tenants did not pay the outstanding rent however they did file an application to dispute the Notice within five days.

The landlord seeks an Order of Possession effective as soon as possible. The landlord also requested to recover the \$100.00 filing fee from the tenant.

The tenant attending disputed the landlord's claim that they owe \$10,900.00 from August, 2013 to May, 2015. The tenant testified that they had made an additional rent payment of \$1,500.00 on February 01, 2015 and the landlord gave them a rent reduction in August 2013 for cleaning the carpets and removing garbage left by the previous tenant. The tenant also testified that as of December 31, 2014 the tenants had

paid all the outstanding rent due from September, 2013 to December, 2014. The tenant agreed that since February, 2015 no rent has been paid as the landlord would only accept it for use and occupancy and the tenant was given information by an Information Officer at the Residential Tenancy Branch to withhold rent in a bank account until the hearing.

The tenants seek to have the 10 Day Notice to End Tenancy cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy as declared by the landlord. The Notice is deemed to have been received by the tenants on April 06, 2015 and the effective date of the Notice is amended to April 16, 2015 pursuant to section 53 of the *Act*.

I accept the undisputed evidence before me that the tenants have failed to pay the rent owed within the 5 days granted under section 46 (4) of the *Act*. While there were considerable discussions about how much rent is owed; as the landlord has withdrawn his application for a Monetary Order to recover the rent at this time I am not required to deal with the actual amount owed of rent; however, the tenant attending agreed that rent has not been paid since at least February, 2015. Consequently even if the amount of rent owed is incorrect on the 10 day Notice, the tenant attending has agreed that no rent has been paid since February, 2015 to May, 2015.

Therefore based on the foregoing, I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

As this date has since passed I find the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession, effective **two days after service on the tenants**. This Order must be served on the tenants. If the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. I Order that the landlord retain this amount from the security deposit and the balance must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

The tenants' application is dismissed without leave to reapply

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: May 22, 2015

Residential Tenancy Branch

