



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, CNC, LAT, FF

For the landlord – OPC, OPR, OPB, MNR, MNDC, 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; to cancel a One Month Notice to End Tenancy for cause; for an Order authorizing the tenant to change the locks on the rental unit; 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 an Order of Possession for cause; for an Order of Possession because the tenant breached an agreement with the landlord; 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.

At the outset of the hearing the landlord withdrew his application for an Order of Possession because the tenant breached an agreement with the landlord and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, although the tenant did not collect the registered mail with the landlord's documentary evidence. The tenant is deemed to have

been served this evidence five days after it was sent pursuant to s. 90(a) of the Act. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order authorising the tenant to change the locks?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2015 for a fixed term tenancy until April 01, 2016. Rent for this unit is \$1,600.00 per month due on the 1st day of each month in advance.

The landlord testified that the tenant had given postdated cheques for the rent. The first rent cheque for April was returned by the bank due to insufficient funds. The landlord testified that he notified the tenant of this and on April 10, 2015 served the tenant in person with a 10 Day Notice to End Tenancy for unpaid rent. The tenant had five days to either pay the outstanding rent or dispute the Notice or the tenancy would end on April 23, 2015. The landlord testified that on April 11, 2015 the tenant sent the landlord an e-transfer for April's rent. The landlord did not immediately deposit this into his account and the tenant then cancelled the e-transfer on April 17, 2015. The landlord has provided documentary evidence showing the e-transfer had been cancelled.

The landlord testified that the tenant therefore failed to pay rent for April and has also failed to pay rent for March, 2015. The total amount of outstanding rent is \$3,000.00.

The landlord seeks a Monetary Order to recover this amount. The landlord seeks to have the 10 Day Notice upheld and requested an Order of Possession effective as soon as possible.

The tenant testified that the landlord did not deposit the rent cheque until April 5th or 6th and agreed that there were insufficient funds to honor the cheque at that time. The tenant testified that he did receive the 10 Day Notice to End Tenancy on April 10, 2015 and sent the landlord an e-transfer for the rent on April 11, 2015. The landlord did not communicate with the tenant and did not deposit the e-transfer straight away so the tenant cancelled it on April 17, 2015. The tenant agreed that he has not paid rent for April or May, 2015 and had also put a stop payment on the rent cheque for May. 27, 15

The tenant seeks to have the 10 Day Notice set aside and seeks an Order to be permitted to change the locks on the rental unit to prevent the landlord locking the tenant out of the unit.

The tenant also seeks to have the One Month Notice to End Tenancy set aside.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which 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 am satisfied from the undisputed evidence before me that there is outstanding rent for April and May, 2015 of **\$3,000.00**. Consequently, it is my decision that the landlord is entitled to recover this amount from the tenant and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on April 10, 2015. While the parties agreed the tenant did send the landlord an e-transfer on April 11, 2015 this was not deposited by the landlord. When the landlord did try to deposit the money the tenant had cancelled the e-transfer. If the tenant had issued the e-transfer for the rent then this should not have been cancelled by the tenant and this was out of the landlord's control. The e-transfer was effective until May 10, 2015 and should have been available to the landlord to deposit up until this time. As the tenant canceled this e-transfer then I must deem that rent for April was not paid. Furthermore, no rent was paid for May as the tenant also put a stop payment on that rent cheque.

Based on the foregoing, I find that the tenant has failed to pay rent for April and May, 2015 and as such I uphold the 10 Day Notice to End Tenancy. As the effective date of the Notice has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlords' claim for an Order of Possession for cause.

As the landlords' claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the tenant's claim to cancel the 10 Day Notice to End Tenancy; based on the above I find the tenant agreed he owed rent for April and May and therefore the 10 day Notice has been upheld. Consequently the tenant's application to cancel the 10 Day Notice is dismissed.

As the tenancy will end I also dismiss the tenant's application to cancel the One Month notice to End Tenancy for cause and for an Order authoring the tenant to change the

locks of the rental unit. As the tenant's claim has no merit I find the tenant must pay the cost of filing his own application.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,050.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days after service upon 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.

The tenant's application is dismissed in its entirety 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 27, 2015

Residential Tenancy Branch

