



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant CNR

For the landlord – OPR, MNR, 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. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord 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 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 landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?
- Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on November 01, 2014. Rent for this unit is now \$675.00 per month due on the 1st of each month.

The landlord testified that the tenant failed to pay rent for March, 2015 of \$675.00. A 10 Day Notice to End Tenancy was served upon the tenant in person on March 02, 2015. The landlord agreed she entered into an agreement with the tenant that the tenant could pay these rent arrears in installments. The tenant paid rent for April, 2015 and an additional amount of \$25.00 that was applied to the rent for March. This left an amount outstanding for March of \$650.00. No further installment payments were made to pay the rent arrears. The landlord testified that the tenant failed to pay rent for May of \$675.00. A second 10 Day Notice to End Tenancy was served upon the tenant in person on May 02, 2015. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 12, 2015. The tenant did not pay the outstanding rent and although the tenant has disputed the Notices within five days, no rent has been paid.

The landlord seeks a Monetary Order to recover the unpaid rent for March and May, 2015 of \$1,325.00 plus the filing fee of \$50.00. The landlord requested that the 10 Day Notice to End Tenancy is upheld and an Order of Possession granted to be effective as soon as possible.

The tenant testified that the landlord's son and his friends came into the tenant's unit on February 28, 2015 and stole the tenant's rent money for March. The tenant testified that she did not report this to the police but did speak to the landlord and the landlord agreed the tenant could pay the rent in installments. The landlord did not believe that her son would come into the tenant's unit and steal money from her. The tenant testified that she tried to make some extra payments of \$70.00 but the landlord would not accept it as the amounts were too small.

The tenant testified that she paid rent for April plus the extra \$25.00 to go towards rent for March. The tenant does not dispute that there is an amount owed for March of \$650.00. The tenant testified that she tried to pay rent for May but the landlord would not take it unless the tenant had the entire amount owed. The tenant testified that she has a statement from her uncle saying he gave the tenant half the rent money and a statement from a neighbour saying they witnessed the tenant trying to pay the rent. No documentary evidence was provided for this hearing from the tenant. The tenant testified that she called the landlord three times about paying the rent.

The landlord disputed the tenant's testimony. The landlord testified that both her sons work full time and would not go into the tenant's unit and steal her rent money. The tenant has no evidence of this. The landlord disputed that the tenant tried to pay rent to the landlord. When the landlord asked the tenant for the rent the tenant said she was not going to pay it as she was saving up for her next place.

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.

The tenant does not dispute that she owes \$650.00 for rent for March and \$675.00 for rent for May. The parties provided contradictory testimony concerning whether or not the tenant tried to pay the rent. The tenant has the burden of proof in this matter to show that attempts were made to pay the rent and the rent was refused by the landlord. In the absence of corroborating evidence from the tenant I find that the tenant has not met the burden of proof. Furthermore I find the tenant has insufficient evidence to show

that the landlord's son or his friends stole her rent money for March. The tenant did not contact the police and report this theft and it is one person's word against that of the other and therefore the burden of proof has not been met. Consequently, I find the tenant failed to pay rent for March, 2015 of \$650.00 and rent for May, 2015 of \$675.00. The landlord is entitled to a monetary award for **\$1,325.00** pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) 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 received by the tenant on May 02, 2015. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant's application to cancel the Notice is dismissed without leave to reapply. I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,375.00**. This Order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's 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 28, 2015

Residential Tenancy Branch

