



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

Both parties attended the hearing, provided evidentiary material in advance of the hearing, and gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for an Order of Possession.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that when he purchased the rental unit on July 1, 2014 the tenant was already a tenant there. The previous owner advised that there was no written tenancy agreement, and the landlord did not receive a security deposit or pet damage deposit. Rent in the amount of \$575.00 per month was payable in advance on the 1st day of each month. The tenant moved out on April 12 or 13, 2015 with no notice to the landlord.

The tenant failed to pay rent for the months of February, March or April, 2015 and now owes the landlord \$1,725.00. On March 26, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by pinning it to the door of the rental unit. A copy of the notice has been provided and it is dated March 26, 2015 and

contains an expected date of vacancy of April 8, 2015 for unpaid rent in the amount of \$1,150.00 that was due on March 1, 2015.

The landlord also served a 2 Month Notice to End Tenancy for Landlord's Use of Property the same day by pinning it to the door of the rental unit. A copy of that notice has been provided and it is dated March 26, 2015 and contains an expected date of vacancy of June 1, 2015. The reason for issuing the notice is:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that after the tenant moved out, the landlord moved in and lived in the rental unit for 2 ½ weeks.

The landlord further testified that the tenant accuses the landlord of starting to demolish the rental unit before the tenant moved out, but that is incorrect. The landlord didn't do anything to the rental property while the tenant resided there, but drove a machine behind property and worked on 3 separate lots that the landlord also owns.

The landlord seeks a monetary order in the amount of \$1,725.00 and recovery of the \$50.00 filing fee.

The tenant testified that the landlord gave verbal notices to move out starting in November, 2014 and every few months the date changed. The landlord was going to build a house where the rental unit is. The landlord also gave the rental unit, which is a manufactured home, to the tenant with the understanding that it would be moved from the landlord's lot but it couldn't be moved because a permit couldn't be obtained.

The tenant paid \$575.00 to the landlord by internet banking on February 1, 2015, but didn't pay any rent for March because the *Act* entitles the tenant to a free month of rent. The tenant moved out on April 14, 2015, having disputed both notices.

Analysis

Where a party makes a monetary claim against another, the onus is on the claiming party to prove the claim.

The tenant is correct that where a landlord serves a tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord is required to provide the tenant with the equivalent of 1 month's rent, however, the tenant must not be in arrears of rent. In this case, the landlord testified that the tenant was in arrears of rent the sum of \$1,150.00 as of March 1, 2015, being \$575.00 for each of the months of February and March, 2015. The tenant disputes that stating that rent for February was paid in full on February 1, 2015 by internet banking. The onus is on the landlord to prove the claim,

however the landlord has provided no tenant ledger, receipts, bank statements or any evidence to support the claim.

The tenant does not deny that rent for the month of March, 2015 was not paid, and relies on the *Act* which provides the tenant with the equivalent of 1 month's rent. The landlord served the tenant with a 10 Day Notice, meaning that the tenant had 5 days to pay the rent in full or dispute the notice. However, at the same time the landlord served the tenant with a 2 Month Notice. The *Act* also states that if a tenant gives the landlord 10 days written notice to move out of the rental unit prior to the effective date of the landlord's 2 Month Notice, the tenant pays rent for the time in the rental unit and is still entitled to the equivalent of 1 month's rent from the landlord. In this case, the tenant did not give the landlord any notice in writing, and therefore I find that the tenant is liable for April's rent in the amount of \$575.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$625.00.

This order is final and binding and may be enforced.

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

