



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JACKEN INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent as the landlord refused to accept the rent; and
- e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated May 6, 2015 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and they are entitled to end the tenancy and obtain an Order of Possession? Is the landlord entitled to recover filing fees also?

Or is the tenant entitled to relief and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in October 2005, that rent is \$1760 a month and a security deposit of \$800 was paid in

2005. It is undisputed that the tenant paid all her rent to date. The landlord claims \$20 for a cheque returned NSF in April 2015.

The tenant said this was a series of errors. The bank made an error in returning her April cheque and offered to reimburse her for any NSF fees. She asked the landlord for a receipt for NSF fees but the account showed they were not charged NSF fees. She said her lease has no provision for NSF fees so she refused to pay this charge to the landlord. Then the landlord refused to accept her cheque for May 2015 and issued her this Notice to End Tenancy. She immediately took a cheque to the owner but admits she made another error by dating the cheque for June 1, 2015. It came to her attention on May 11, 2015 when the landlord went to process the cheques and she immediately corrected it on May 11, 2015. The tenant said she has been a tenant for 10 years and there was only one problem eight years ago so there is no reason for the landlord to refuse to accept cheques.

The landlord said they were not aware of the requirement of Residential Tenancy Regulation 7(1) (d) and 7(2). He said they used the standard tenancy agreement and it did not include that clause.

In evidence is the Notice to End Tenancy for unpaid rent, the registration receipt, many emails, a copy of the June cheque and many emails.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's claim of \$20 for unpaid rent is illegal as it is for an NSF fee. According to Residential Tenancy Regulation 7(1) (d) and 7(2), this charge must be included in the lease provisions and both parties acknowledged that it is not. I dismiss the application of the landlord without recovery of the filing fee as the application was based on an illegal charge.

I find the Notice to End Tenancy dated May 6, 2015 was served by posting it on the door and by registered mail; this is deemed to be received May 9, 2015 for posting or May 11, 2015 for registered mail. I find the tenant corrected the cheque for May by May 12, 2015 and her May rent was paid in full. Section 46(4) of the Act provides that a tenant may pay the rent in full within 5 days of receipt of the Notice and in that case, the notice is of no effect. I find the tenant paid her rent in full within 5 days of service so the Notice to End Tenancy dated May 6, 2015 is of no effect so is set aside and cancelled.

I find the tenant entitled to recover her filing fee for the Notice to End Tenancy was issued due to a refusal of the landlord to accept her cheque for May's rent because she refused to pay an illegal charge. As a result, she had to file her application.

Conclusion:

I dismiss the application of the landlord in its entirety without leave to reapply and I find they are not entitled to recover filing fees for the application as it was based on an unauthorized charge pursuant to section 7 of the Residential Tenancy Regulation.

The Notice to End Tenancy dated May 6, 2015 is hereby set aside and cancelled. The tenancy continues. I find the tenant entitled to recover her \$50 filing fee for the reasons stated above.

I HEREBY ORDER THAT the tenant may recover her \$50 filing fee by deducting it from her next rental payment.

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: June 18, 2015

Residential Tenancy Branch

