



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes

For the tenant – CNR, O

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 and other issues. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

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. The parties confirmed receipt of 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 10 Day Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that this month to month tenancy started on February 01, 2015. Rent for this unit is \$725.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$362.50 at the start of the tenancy.

The landlord testified that the tenant failed to pay rent for May, 2015. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (The Notice) on May 02, 2015 and this was posted on the tenant's door on that date. The Notice states the tenant owes \$725.00 in rent for May. 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 disputed the Notice within five days.

The landlord testified that he spoke to the tenant on the phone and was informed by the tenant that he wanted to vacate the rental unit due to noise from the tenant above. The landlord testified that he agreed he would use the tenant's security deposit and a further payment from the tenant for the rent for May as long as the tenant provided a letter stating he would be vacating the unit on May 31, 2015. The tenant did not want to provide a letter so the landlord could not apply the tenant's security deposit to the rent. The landlord testified that the tenant has provided a bank draft for \$362.00 in evidence; however, the landlord testified that he has never met the tenant to receive this cheque. The tenant could have given the cheque to the landlord's caretaker who lives at the building in partial payment towards May's rent but failed to do so. The tenant also failed to pay rent for June, 2015 of \$725.00.

The landlord seeks a Monetary Order to recover unpaid rent for May and June of \$1,450.00 and the \$50.00 filing fee. If the tenant pays the rent today and pays the filing fee the landlord will not serve or enforce the Monetary Order. The landlord seeks an Order of Possession effective as soon as possible. If the tenant pays the rent for May and June today the landlord agreed to not enforce the Order of Possession until June 30, 2015.

The tenant agreed that he did not pay rent for May and that he received the Notice on May 02, 2015. The tenant testified that he could no longer live with the noise from the unit upstairs and spoke to the landlord about ending the tenancy at the end of May. The tenant testified that he did not want to provide the landlord with a letter agreeing to vacate on May 31, 2015 as the tenant was unsure that he could find new accommodation by that date. The tenant testified that

the landlord agreed to use the security deposit and take a bank draft for the balance of May's rent but later refused when the tenant would not provide the letter. The landlord refused to take the bank draft or use the security deposit. The tenant agreed that he has not paid rent for June, 2015.

Analysis

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

26. 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 the tenant has failed to pay rent for May and June, 2015 to the amount of \$1,450.00. With regard to the security deposit being used against the rent; a security deposit is an amount held in trust by the landlord until the end of the tenancy and must then be dealt with under s. 38 of the *Act*. A security deposit cannot be used to cover rent if the tenancy continues. There is insufficient evidence to show that the tenant sent the landlord the bank draft for the amount of \$362.00 which could have been applied to the outstanding rent for May but even if the tenant had done so it would not alter the outcome of this hearing if the whole amount of \$725.00 was not paid. Consequently, I find the landlord will receive a monetary award for the amount of **\$1,450.00** pursuant to s.67 of the *Act*.

The landlord agreed at the hearing that if the tenant pays the outstanding rent then the landlord will not serve or enforce the Monetary Order and it will become null in void.

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*.

The landlord will receive a Monetary Order for **\$1,500.00**.

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* and received this on May 02, 2015. The Notice

states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. 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 landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*. The landlord agreed at the hearing that if the tenant pays the outstanding rent for May and June the landlord will not serve or enforce the Order of Possession until June 30, 2015

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 **\$1,500.00**. This Order must be served on the Respondent and may then 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: June 18, 2015

Residential Tenancy Branch

