



Dispute Resolution Services

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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 or utilities. The landlord applied for Order of Possession for unpaid rent or utilities; 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, 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 tenant testified that he did not get the entire contents of the landlord's evidence. The landlord testified the tenant was sent the same evidence package as the Residential Tenancy Branch by registered mail. I have allowed the landlord's evidence and allowed both parties to submit additional evidence after the hearing had concluded. 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 have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2014 for a fixed term which ended on January 31, 2015. The tenancy is now a month to month tenancy. Rent for this unit is \$1,022.00 per month due on the first of each month in advance.

The landlord testified that the tenant has failed to pay rent each month. Some of the tenant's rent cheques have been returned due to insufficient funds and the tenant has made part payments towards the rent during the months since February, 2015. By June, 2015 the tenant owed an amount of rent of \$1,794.00. The landlord has provided a rent ledger showing the amounts due each month and the payments made each month.

The landlord's agent served the tenant with a 10 Day Notice to End Tenancy on June 12, 2015. This Notice informed the tenant that he owed \$1,022.00 for February, 2015 and the tenant had five days to either pay the outstanding rent or file an application to dispute the Notice. The Notice has an effective date of June 22, 2015.

The landlord's agent testified that they sold the home and the new owners wanted to move into the tenant's unit. The tenant did not vacate the unit and did not pay the outstanding rent. The landlord's agent testified that they had told the new owners that the tenant would be vacating the unit and when the tenant did not vacate the unit or pay rent for July and August to the new owners, the new owners asked the landlord to pay Julys rent and half the rent for August. The landlord testified that they paid the new owners \$1,022.00 for July and \$511.00 for August on completion date of July 05, 2015. The landlord seeks to recover these amounts from the tenant. The total amount of

unpaid rent is \$3,327.00. The landlord seeks to amend their application to include unpaid rent for July and August, 2015.

The landlord seeks a Monetary Order to recover the unpaid rent and filing fee and an Order of Possession effective as soon as possible.

The tenant disputed the landlord's claim. The tenant testified that he had been paying rent to the landlord each week and thought he was paid up in June, 2015. The tenant testified that he did not receive the landlord's rent ledger showing the payments made from February, 2015. I went through the rent ledger to confirm the dates and the amounts paid with the tenant. The tenant agreed he paid \$100.00 towards February's rent leaving an unpaid balance of \$922.00. The tenant agreed he paid \$1,200.00 during March; however, testified that an additional payment was made of \$400.00 on March 27 which is not shown on the landlord's rent ledger. The tenant provided additional evidence to show a \$400.00 was paid on March 27, 2015. The tenant testified he has therefore paid \$1,500.00 in March. This leaves an outstanding balance for February of \$444.00 and all of the rent for March has been paid. The tenant agreed he paid \$696.00 during April, leaving an unpaid balance of \$326.00. The tenant agreed he paid \$1,020.00 in May, leaving an unpaid balance of \$22.00. The tenant agreed he paid \$300.00 in June, leaving an unpaid balance of \$722.00. The tenant agreed he did not pay rent in July to this landlord or to the new landlord. The tenant testified that he paid \$750.00 to the new landlords on August 01, 2015 leaving an unpaid balance of \$272.00. The tenant has provided additional evidence to show this payment.

The tenant testified that when he paid \$750.00 on August 01, 2015 the new landlords accepted this and reinstated the tenancy as they told the tenant he could stay in the rental unit until the end of October, 2015 as their parents are coming to live in the tenant's unit.

The landlord's agent testified that they have no knowledge that a payment was made to the new owners in August, 2015.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which 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 have turned my mind to the contradictory issue of how much rent is outstanding and which landlord is entitled to receive the rent. The landlord disputed that the tenant paid an additional amount of rent in March 2015 of \$400.00 and testified that they had no knowledge that the tenant had paid \$750.00 to the new landlord for August, 2015. The tenant was allowed to submit some additional evidence concerning these payments and from this evidence I have determined that the tenant did pay the additional amount of \$400.00 on March 27, 2015 and this cheque has been signed on the back by the landlord's agent. I therefore conclude that the amount of rent owing to the landlord for February is \$444.00; March is paid in full; April \$326.00 is owed; May, \$22.00 is owed; and June \$722.00 is owed; to a total amount of **\$1,514.00**. With regard to the rent paid to the new owners by the landlord on completion date, the tenant agreed he did not pay \$1,022.00 for July to the new owners; the landlords were allowed to provide some additional evidence to show that that landlord paid rent for July of \$1,022.00 and rent for August of \$511.00 to the new owners. The additional evidence provided by the landlord is the first page of the contract and sale addendum. This evidence does not show that the landlord paid \$1,022.00 or \$511.00 to the new owners. The evidence states that the rent is \$1,022.00 per month and a security deposit of \$450.00. It goes on to state that the rent for July will be \$923.00 and the security deposit of \$450.00 will be transferred to the buyer. From this evidence I must conclude that the landlord transferred the security

deposit of \$450.00 to be held in trust until the end of the tenancy. There is no mention that July's rent was transferred to the new owner the contract only stipulates that rent for July will be \$923.00 because the sale of the home completed on July 05, 2015. I will therefore allow the landlord to recover five days rent from the tenant for July to an amount of **\$99.00**. There is insufficient evidence to show the landlord paid \$511.00 to the new owners for August, 2015.

In normal circumstances if the property has been sold to new owners and the tenant fails to pay rent to them as the new landlords then they should serve the tenant with a 10 Day Notice to End Tenancy and/or seek to recover any unpaid rent through Dispute Resolution.

The landlord has established a claim to recover unpaid rent of **\$1,613.00**.

With regards to the landlord's application for an Order of Possession, the landlord was the current landlord at the time the Notice was served upon the tenant, the landlord sold the property on July 05, 2015 before this hearing commenced and the new owners are now the landlord of the tenants. The landlord's application is only in their name and does not name the new landlords. Therefore, even if the old landlords were entitled to an Order of Possession it would not be enforceable. Furthermore, the new owners have accepted rent from the tenant since the 10 Day Notice was served and past the effective date of the 10 Day Notice. The tenant testified that the new owners also informed the tenant he could live in the rental unit until the end of October, 2015. It is my decision that the new owners have effectively reinstated the tenancy as they accepted rent from the tenant and did not inform the tenant that the rent was accepted for use and occupancy only and did not reinstate the tenancy.

If it is the case that the new owners want to end the tenancy for landlord's use of the property at the end of October they must serve the tenant with a Two Month Notice to End Tenancy by the end of August, 2015 if it is to be effective on October 31, 2015. The

other option for the tenant and the new owners is to enter into a mutual agreement to end the tenancy on October 31, 2015 or another date they mutually agree upon.

As the landlord's claim has some 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*.

Conclusion

The tenant's application is upheld the 10 Day Notice to End Tenancy for unpaid rent dated June 12, 2015 is cancelled and the tenancy will continue at this time.

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 **\$1,663.00**. 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.

The landlord's application for an Order of Possession 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: August 13, 2015

Residential Tenancy Branch

