



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, MNR, MNSD, MNDC, CNR, CNC, CNE, AS, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for an order to cancel a notice to end tenancy and for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order directing the landlord to allow the tenant to sublet the rental unit.

The notice of hearing was served on the tenant on August 10, 2015, in person. Despite having been served the notice of hearing and having made application, the tenant did not attend the hearing. Accordingly, the tenant's application is dismissed without leave to reapply. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

During the hearing the landlord informed me that the tenant was still in occupation of the unit and therefore the repairs could not be carried out. Since the tenancy has not yet ended, I dismiss the landlord's claim for the cost of repairs, with leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started approximately two years ago. The monthly rent is \$1,100.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$550.00. The landlord testified that the tenant failed to pay rent for May 2015 and on May 02, 2015; the landlord served the tenant with a ten day notice to end tenancy.

The tenant did not dispute the notice and continued to occupy the rental unit without paying rent. At the time of the hearing the tenant owed the landlord \$1,100.00 for each of the months of May, June, July and August for a total of \$4,400.00. The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$4,400.00 for unpaid rent plus \$50.00 for the filing fee.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on May 02, 2015 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to \$4,400.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00. I order that the landlord retain the security of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3,900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant and a monetary order in the amount of **\$3,900.00**.

The tenant's application is dismissed in its entirety.

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 18, 2015

Residential Tenancy Branch