



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D & S DUPERRON PROPERTY HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, CNR, MNR, OLC, RP, ERP, PSF, AS, RR FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

Pursuant to a notice to end tenancy dated July 03, 2015, the landlord had originally applied for an order of possession and for a monetary order for unpaid rent by direct request, on July 17, 2015. This matter was dealt with in a non-participatory hearing and the landlord was granted an order of possession and a monetary order for unpaid rent.

However, the tenant had also applied to dispute the notice to end tenancy in a timely manner on July 07, 2015. Due to an administrative error the files were scheduled to be heard separately instead of together. Upon receipt of the decision dated July 23, 2015, the tenant applied for a review hearing of the landlord's application and was granted one to be heard on this date – September 10, 2015 along with his application for dispute hearing.

Accordingly this hearing dealt with applications of both parties. The landlord applied for an order of possession and a monetary order for unpaid rent. The tenant applied to cancel the notice to end tenancy, for an order directing the landlord to comply with the *Act*, carry out emergency repairs, provide services, allow the tenant to sublet and reduce rent. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant stated that the landlord's evidence package was missing certain documents. I explained to the tenant that I would address this issue if necessary, during the hearing.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to the host of remedies that he has applied for?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on June 23, 2014 for a fixed ending December 31, 2014. The tenancy continued on as a month to month after the fixed term ended. The rent is \$880.00 per month due on the first day of each month.

The tenant testified that on July 01, 2015, he paid rent by cheque and this cheque was returned to him in two pieces with a demand for rent by money order or certified cheque. The landlord denied having ripped the cheque and stated that it was received in two pieces. The tenant filed a copy of the note sent by the landlord which states:

Received on July 06, 2015 in two pieces. Please replace by money order or certified cheque.

The bottom of the note showed a rent cheque ripped in two.

The tenant testified that he had not paid rent for July, August and September and agreed that he owed \$2,640.00 in unpaid rent.

The tenant filed evidence and attempted to describe the condition of the rental unit that was in need of repair and was the reason he did not pay rent. I explained to the tenant that since he had not paid rent, the tenancy would be coming to an end and therefore it was not necessary for me to order the landlord to carry out repairs.

Analysis

The tenant was deemed to have received the notice to end tenancy for unpaid rent, on July 06, 2015. The tenant argued that he had attempted to pay rent on July 01, 2015 and that the landlord had ripped the cheque and returned it to him and therefore he did not pay rent for July. Upon review of the landlord's note filed into evidence by the tenant, the landlord clearly states that the cheque was received in two pieces and requests for payment by money order or certified cheque.

Even if I accept the tenant's evidence that the landlord ripped the cheque, I also find that the tenant did not pay rent for July within five days of receiving the notice to end tenancy and therefore pursuant to Section 46 to set aside the notice to end a residential tenancy, 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.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. As agreed to by the tenant, I find that the tenant did not pay rent for July, August and September and now owes the landlord a total of \$2,640.00 in unpaid rent. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the notice to end tenancy is upheld and the tenancy is ending, the tenant's application for various tenancy related remedies is moot and accordingly dismissed. The tenant has not proven his case and must also bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession **effective two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$2,640.00**.

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: September 10, 2015

Residential Tenancy Branch

