



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILSON RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, CNR, CNC, MNR, MNDC, OLC, AS, OPT, AAT, LAT, 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 and the filing fee. The tenant applied for an order to cancel the notice to end tenancy, for an order directing the landlord to return his property and for the recovery of the filing fee.

The applications of both parties were unclear as they had ticked off boxes and then cancelled some. Both parties had applied for other remedies as well but confirmed at the hearing that the above mentioned remedies were what they were seeking.

The landlord stated that he acquired ownership of the building in December 2013. The tenant has named another party as the respondent on his application who is probably the previous owner. I find that the respondent on the tenant's application is the current owner.

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.

Issues to be decided

Is the landlord entitled to an order of possession and to a monetary order for unpaid rent? Is the tenant entitled to the remedies that he has applied for?

Background and Evidence

The tenancy started about ten years ago. The tenant was hired by the previous owner to work as the resident building manager.

The tenant was paid a salary and his rent was reduced by \$300.00 for the duration of the employment. After the employment ended the tenant paid the full rent of \$750.00. Rent is payable on the first of each month.

Both parties agreed that on August 05, 2015, the tenant's employment was terminated and the tenant was required to pay full rent. The tenant had already paid subsidized rent on August 01, 2015 and the prorated portion owed to the landlord was calculated as \$348.39. On August 06, 2015, the landlord served the tenant with a notice to end tenancy for nonpayment of rent in this amount.

The tenant agreed that he had not paid the outstanding rent and as of the date of this hearing still owed rent to the landlord. The tenant paid full rent for the ensuing months and the landlord issued receipts for use and occupancy only,

The tenant stated that he stored the tools used for his trade in the building office and after his employment ended, on August 08, 2015, he used a spare key to enter the office to retrieve some of his tools. The tenant stated that he returned the key to the landlord and was denied entry to recover the balance of his tools. The landlord stated that he was not sure of the ownership of the tools and therefore did not release any more tools to the tenant.

The tenant stated that in the past two months he observed his tools being used by the landlord's maintenance staff. The tenant has applied for an order directing the landlord to return his property.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on August 06, 2015 and did not pay rent within five days of receiving the notice to end tenancy pursuant to S 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 on or before 1:00pm on October 31, 2015. 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 owes a total of \$348.39 in unpaid rent. Since the landlord has proven his case, I award the landlord the recovery of the filing fee of \$50.00 for a total established claim of \$398.39

The landlord was not sure about the ownership of the tools in his possession and agreed that he may be holding some of the tenant's tools. I order the landlord to return the tenant's property or the monetary value of the property within 15 days of receipt of this decision. The tenant is at liberty to make an application for dispute resolution, in the event that the landlord does not comply with this order.

Since the tenant has proven a portion of his case I award him the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of \$398.39 and the tenant has established a claim of \$50.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$348.39.00 which consists of the difference between the established entitlements of both parties.

Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$348.39**. 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 on or before 1:00 pm on October 31, 2015 and a monetary order in the amount of **\$348.39**.

I order the landlord to return the tenant's personal property within 15 days of receipt of this decision.

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: October 15, 2015

Residential Tenancy Branch

