



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jose's Excavating Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNL, AAT, OPR, OPL, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. An Order cancelling two notices to end tenancy - Section 46 and 49;
2. An Order allowing access to the unit - Section 70; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy started on June 1, 2014. Rent of \$850.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The Parties agree that the Tenant has been paying rent in cash since April 2015 due to a couple of the Tenant's rent cheques being returned NSF.

The Tenant states that due to harassment from the Landlord the Tenant no longer wanted to deal with the Landlord in person and for September 2015 the Tenant did not pay the rent in cash nor did the Tenant pay the rent in cash for October and November 2015. The Tenant states that the Landlord still had the post-dated cheques for these months. The Tenant states that after receiving the Notice no effort was made to check on whether the Landlord had any rent cheques and no effort was made to arrange for a third party to pay the rent.

The Landlord states that the Tenant's post-dated cheques for 2015 were all returned to the Tenant in April 2015. The Landlord waives the rent for October 2015 in lieu of the notice to end tenancy for landlord's use and claims unpaid rent for September and November 2015. The Landlord seeks an order of possession for as soon as possible. The Tenant states that she would need a bit more time to move out of the unit.

Analysis

Section 26 of the Act provides that 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. Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Although the Tenant disputed the Notice, given the Tenant's evidence that rent was not paid in cash for September 2015, accepting the Landlord's evidence that it no longer had any cheque for rent and considering that the Tenant did nothing to enquire about the status of the cheques after receiving the Notice, I find that

the Tenant did not pay rent for September 2015 and that the Notice is therefore valid. As the tenancy is ending and the Tenant has not been successful in relation to the Notice I dismiss the Tenant's application.

As the Notice is valid I find that the Landlord is entitled to an order of possession effective November 22, 2015. The Landlord is also entitled to unpaid rent of **\$850.00** for September 2015 and pro-rated rent of **\$623.33** ($850/30 \times 22$) for November 2015 rent to and including November 22, 2015. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,523.33**. Deducting the security deposit of **\$425.00** plus zero interest leaves **\$1,098.33** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on November 22, 2015.

I order that the Landlord retain the **deposit** and interest of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,098.33**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 17, 2015

Residential Tenancy Branch

