



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNC, CNR, ERP, RP, LRE, OLC, MNR, 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, bank charges, mailing costs and the filing fee. The tenant applied to cancel notices to end tenancy for non-payment of rent and for cause and for a monetary order for loss of wages, painting, cleaning and the filing fee. The tenant also applied to restrict the landlord's entry into the rental unit and for an order directing the landlord to comply with the *Act* and make repairs.

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 or should the notices to end tenancy be set aside? Is the landlord entitled to a monetary order? Is the tenant entitled to a monetary order and the remedies that she has applied for?

Background and Evidence

The tenancy started on June 27, 2014. The rent is \$1,300.00 per month due on the first of each month.

On February 02, 2016, the landlord served the tenant with a notice to end tenancy for cause, in person at her place of employment. The tenant stated that as a result, she was suspended from work and suffered a loss of income.

The tenant also testified that at the start of the tenancy, the rental unit was not painted. The parties came to an agreement that the tenant would paint the unit in exchange for half a month's rent free stay. The tenant agreed that she received the rent free stay but stated that she did more than she had anticipated doing and is now claiming \$6,500.00 from the landlord. The landlord denied having promised the tenant anything other than the half month of rent free stay.

The tenant also stated that at the start of tenancy, the unit was not cleaned up to her standards and that she was forced to clean. The tenant is claiming \$300.00 for her time spent cleaning the unit. The landlord stated that the unit was clean and the carpets were professionally steam cleaned, prior to the start of this tenancy.

The tenant had provided the landlord with post-dated rent cheques. The landlord deposited a rent cheque on February 01, 2016 and it was returned to him on February 10, 2016. The tenant agreed that on February 03, 2016, she had put a stop payment on the rent cheque due to harassment by the landlord and due to the condition of the unit that needed repairs.

On February 10, 2016, the landlord served the tenant with a ten day notice to end tenancy for non-payment of rent in the amount of \$1,300.00. The tenant disputed both notices in a timely manner, but as of the hearing today (April 01, 2016), she agreed that she had not paid rent for February and March 2016.

The tenant testified that the landlord does not provide 24 hour notice to enter the unit and drives by multiple times per day. The tenant also complained that the landlord only communicates with her and not with the male tenant.

The landlord is claiming the following:

1.	Unpaid rent for February and March 2016	\$2,600.00
2.	Unpaid rent for April 2016	\$1,300.00
3.	NSF Charge	\$7.00
4.	Mortgage interest for unpaid rent	\$12.48
5.	Mailing costs	\$28.56
6.	Photographs	\$2.36
7.	Filing fee	\$100.00
	Total	\$4,050.40

The tenant is claiming the following:

1.	Loss of wages	\$448.00
2.	Painting	\$6,500.00
3.	Cleaning	\$300.00
4.	Filing fee	\$100.00
	Total	\$7,348.00

Analysis

Landlord's Application

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on February 10, 2016 and did not pay rent within five days of receiving the notice to end 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.

Since I have upheld the notice to end tenancy for non-payment of rent, it is not necessary to address the other notice to end tenancy.

The tenant agreed that she had not paid rent for February and March 2016 and therefore I award the landlord his claim for unpaid rent.

The landlord has also made a claim for rent for April 2016. Since the landlord has an order of possession and may find a tenant for a portion of the month, I dismiss this claim with leave to reapply.

The tenant agreed that she had put a stop payment on the rent cheque for February. Accordingly, I find that she is responsible for the bank charges incurred by the landlord. The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the landlord's claim for mortgage interest, mailing costs and photographs is dismissed. Since the landlord has proven most of his case, I award the landlord the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Unpaid rent for February and March 2016	\$2,600.00
2.	Unpaid rent for April 2016	\$0.00
3.	NSF Charge	\$7.00
4.	Mortgage interest for unpaid rent	\$0.00
5.	Mailing costs	\$0.00
6.	Photographs	\$0.00
7.	Filing fee	\$100.00
	Total	\$2,707.00

Tenant's application:

The landlord may serve the tenant in person at her place of work. The tenant has not established that she was suspended from work because her landlord visited her during work hours. Accordingly the tenant's claim for loss of wages is dismissed

The tenant agreed that the parties entered into a verbal agreement for the tenant to paint the rental unit for half a month of rent free stay. The tenant stated that she received the rent free stay. The landlord denied having agreed to pay the tenant an additional amount for painting. In the absence of a written agreement to support the tenant's monetary claim for the cost of painting, I must dismiss her claim.

The landlord denied having agreed to pay the tenant \$300.00 for cleaning the rental unit. He stated that the unit was clean and the carpets were professionally cleaned prior to the start of this tenancy. Again, in the absence of a written agreement, the tenant's claim for \$300.00 is dismissed.

Since the tenant has not proven her claim, she must bear the cost of filing her application.

Overall the tenant has not established a monetary claim and I find that the landlord has established a claim of \$2,707.00 for unpaid rent, bank charges and the filing fee. 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 tenancy is ending, the tenant's application to restrict the landlord's entry into the unit and for an order directing the landlord to comply with the *Act* and carry out repairs is moot and accordingly dismissed.

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 **\$2,707.00**.

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: April 01, 2016

Residential Tenancy Branch

