



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR

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. The tenant applied for an order to cancel the notice to end tenancy. 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 a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenancy started on December 01, 2015. The monthly rent is \$1,600.00 and is due on the first of each month. The tenant pays the entire utility bill but is responsible for two thirds only. The landlord's share of one third is deducted off the rent. The landlord receives \$450.00 per month directly from Social Services on behalf of the tenant's son. The tenant covers the balance rent.

The tenant stated that in May 2016 the landlord received a cheque for \$450.00 and filed a copy of her son's benefit statement from Social Services to support her testimony. The landlord denied having received a cheque and filed a copy of his bank statement which does not show receipt of a cheque in this amount. The tenant also stated that there was some fraudulent activity on her bank account and because someone "broke" into her account, she was unable to pay rent that was due on June 01, 2016. The tenant agreed that she owed \$1,062.00 for June after deducting the landlord's share of utilities.

On May 24, 2016 the landlord served the tenant with notice to end tenancy. The tenant disputed the notice in a timely manner. The tenant stated that she attempted to pay rent for June on June 28, 2016 but the landlord refused to accept it.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on May 27, 2016 for \$450.00 in unpaid rent. Both parties offered contradictory testimony regarding the payment and receipt of \$450.00. The tenant testified that there was fraudulent activity on her bank account and accordingly I am unable to determine whether the landlord received \$450.00 for May 2016. Therefore I dismiss this portion of the landlord's claim with leave to reapply. However the tenant agreed that at the time of the hearing she owed \$1,062.00 for June 2016.

Based on the above, I find that the tenant did not pay rent within five days of receiving the notice to end tenancy, 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 also find that the landlord is entitled to unpaid rent in the amount of \$1,062.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the total amount of \$1,062.00. 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. I also grant the landlord a monetary order in the amount of **\$1,062.00**. 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: June 29, 2016

Residential Tenancy Branch