



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNDC, 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 for non-payment of rent 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 and 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.

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 and the filing fee?

Background and Evidence

Both parties agreed to the following: The landlord purchased the property in 2011 and the tenant was occupying the property at that time. On November 01, 2012 the parties entered into a tenancy agreement for a fixed term of one year and a monthly rent of \$1,650.00 due on the first of each month. The tenancy continued on a month to month basis after the fixed term.

The tenant testified that in 2014 he had a verbal agreement with the landlord to carry out some construction work at the landlord's residence. The tenant stated that he did not get paid for this work and that the landlord kept promising to pay him but failed to do so. The tenant continued to pay his rent until March 01, 2016. The tenant stated that he stopped paying rent to recoup the debt owed to him by the landlord. The tenant agreed that he did not pay rent for the months of March, April, on June 01, 2014.

On May 03, 2016, the landlord served the tenant with a notice to end tenancy for \$4,950.00 in unpaid rent. The tenant disputed the notice but did not pay rent and continues to occupy the rental unit. At the time of the hearing the tenant agreed that he owed rent for the period of March to June 2014 in the amount of \$6,600.00.

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant argued that he had a verbal agreement with the landlord to carry out some work and was never paid. The landlord stated that the tenant was paid in full.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, in this case the tenant has the onus of proving, during these proceedings, that his claim for the cost of work done by him is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms. In addition, this alleged agreement took place in 2014, some two years prior to the notice to end tenancy and since then (2014); the tenant has paid rent every month until he stopped doing so in March 2016.

In the absence of evidence to the contrary, I find that the tenant did not pay rent from March 2016 to date and owes the landlord \$6,600.00 in unpaid rent.

The tenant received the notice to end tenancy for unpaid rent, on May 03, 2016 and made application to dispute it in a timely manner but 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 \$6,600.00 for unpaid rent and \$100.00 for the filing fee for a total of \$6,700.00. 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.

The tenant's application to cancel the notice is dismissed and the tenant must therefore 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 **\$6,700.00**

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 08, 2016

Residential Tenancy Branch