



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF – Landlord’s application
 CNR DRI OLC – Tenant’s application

Introduction

This hearing was scheduled to hear matters pertaining to cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on June 28 2016 seeking an Order of Possession for unpaid rent; a Monetary Order for unpaid rent or utilities; and to recover the cost of the filing fee.

The Tenant filed on June 14, 2016 seeking an Order to cancel the 10 Day Notice to end tenancy; to dispute an additional rent increase; and to order the Landlord to comply with the *Act*, Regulation, or tenancy agreement.

Upon review of the two applications for Dispute Resolution before me and the tenancy agreement which was submitted into evidence I note that the Tenant listed a first name, two middle names, and a surname on his application for Dispute Resolution. That surname was not listed on the tenancy agreement for the Tenant’s name; however, the Tenant’s signature on the tenancy agreement included that surname. The tenancy agreement and the Landlord’s application for Dispute Resolution listed as surname which was the same as one of the Tenant’s middle names he had listed on his application for Dispute Resolution. Accordingly, I amended the style of cause to include the Tenant’s name listed in both formats, as the evidence supports he has clearly used both formats of his name, pursuant to section 64(3)(c) of the *Act*.

The hearing was conducted via teleconference and was attended by the Landlord and the Landlord’s legal counsel (Counsel). Counsel also acted as the Landlord’s as he conducted the service of hearing documents. The Landlord and Counsel provided affirmed testimony. No one was in attendance on behalf of the Tenant.

The Landlord confirmed receipt of the Tenant’s application and notice of hearing documents.

The Counsel submitted that he personally served the Tenant with copies of the Landlord’s application, notice of hearing documents, and evidence package on June 30, 2016.

Based on the undisputed submissions of the Landlord and Counsel, I find the Tenant was sufficiently served notice of this proceeding. Despite this teleconference hearing being scheduled to hear the Tenant’s application as well as the Landlord’s application,

no one was in attendance on behalf of the Tenant. Accordingly, I proceeded in the absence of the Tenant to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written tenancy agreement that began on March 1, 2016. As per that agreement rent of \$1,200.00 was payable on or before the 20th day of each month. The Tenant paid a total of \$600.00 as the security deposit on or before February 23, 2016.

The Landlord testified that she received a total of \$1,000.00 towards April 2016 rent (\$800.00 + \$200.00) leaving a balance owed for April 2016 of \$200.00. No rent has been received for May, June, or July 2016.

Counsel submitted he personally served the Tenant with a corrected 10 Day Notice to end tenancy on June 17, 2016. That notice listed only the amount of rent that was outstanding for the month of June 2016 and did not list the total arrears as submitted by the Landlord.

The Landlord seeks an Order of Possession for as soon as possible and a Monetary Order for all of the outstanding rent.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for 27 minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

The Tenant filed an application to cancel the Notice on June 28, 2016 and wrote on his application that he received the 10 Day Notice on June 17, 2016. Therefore, I conclude the Tenant the effective date of the Notice was **June 27, 2016**.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In absence of the Tenant I accepted the Landlord's undisputed evidence that the Tenant had no legal right to withhold the payment of rent. Therefore, I conclude this tenancy ended on the effective date of the Notice, **June 27, 2016**, pursuant to section 46 of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord claimed unpaid rent of \$2,600.00 which was comprised of \$200.00 owed for April 2016; \$1,200.00 for May 2016; and \$1,200.00 for June 2016, in accordance

with section 26 of the *Act*. Based on the aforementioned, I accept the undisputed evidence that rent remained unpaid and I award the Landlord unpaid rent for April, May, and June 2016 in the amount of **\$2,600.00**.

As noted above this tenancy ended **June 27, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for July 2016. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant. Therefore, I award the Landlord use and occupancy and any loss of rent for the full month of July 2016 in the amount of **\$1,200.00**. Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord has been issued a Monetary Order in the amount of **\$3,900.00** (\$2,600.00 + \$1,200.00 + \$100.00) which may be enforced through Small Claims Court upon service to the Tenant. Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Tenant's application was dismissed without leave to reapply. The Landlord was successful with their application and was granted an Order of Possession and a Monetary Order in the amount of \$3,900.00.

This decision is final, legally binding, and 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: July 22, 2016

Residential Tenancy Branch