



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNDC, RP, 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, and the filing fee. The tenant applied to cancel the notice to end tenancy for non-payment of rent, for a monetary order for compensation, for an order directing the landlord to carry out repairs and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions and gave affirmed testimony.

The tenant stated that he filed documentary evidence to support his monetary claim for compensation. He testified that he mailed the package to the landlord and to the Residential Tenancy Branch by regular mail on July 14, 2016. The landlord testified that he had not received the package. The tenant's evidence package was not on file and therefore not before me. I checked the online case management system and found none. Since the tenant's evidence to support his monetary claim was not before me or before the landlord, I have dismissed this portion of the tenant's application with leave to reapply.

The tenant also testified that he will be moving out on September 04, 2016. Since the tenancy is coming to an end, the tenant's application for an order directing the landlord to carry out repairs is moot and accordingly dismissed.

This hearing only dealt with the landlord's application for an order of possession, and a monetary order for unpaid rent and for the recovery of the filing fees of both parties

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy started on October 02, 2015. The rent is \$2,600.00 per month due on the second day of each month.

On July 09, 2016, the landlord served the tenant with a notice to end tenancy for non-payment of rent in the amount of \$2,600.00. The tenant agreed that he had not paid rent for July and further added that he had also not paid rent for August 2016. The tenant stated that the reason for not paying rent was that the unit had toxic mould and that the occupants were falling sick.

The tenant agreed that since he is moving out on September 04, 2016, he owes rent in the total amount of \$5,373.00.

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 July 09, 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) and to a mutual agreement between the parties, I am issuing a formal order of possession effective September 04, 2016. The order may be filed in the Supreme Court for enforcement.

The tenant agreed that he owed rent in the total amount of \$5,373.00 and therefore I award the landlord his claim for unpaid rent.

Since the landlord has proven his case, I award the landlord the recovery of the filing fee of \$100.00.

Tenant's application:

The tenant agreed that he owed rent and has agreed to move out on September 04, 2016. Since the tenant applied to cancel the notice to end tenancy but agreed to move out, he must bear the cost of filing his application.

Overall the landlord has established a claim of \$5,473.00 for unpaid rent 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.

Conclusion

I grant the landlord an order of possession effective at **1:00pm on September 04, 2016**. I also grant the landlord a monetary order in the amount of **\$5,473.00**.

The tenant's application for compensation is dismissed with leave to reapply. The remainder of the tenant's application is dismissed.

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: August 24, 2016

Residential Tenancy Branch