



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC FF – Landlord's application
CNC – 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 Tenant spelled his first name on his application for Dispute Resolution differently than how the Landlord spelled the Tenant's first name on the Landlord's application for Dispute Resolution. Therefore, I amended the style of cause to list the Tenant's name twice to display the spelling listed on both applications, pursuant to section 64 of the *Act*.

The Landlord filed on August 26, 2016 seeking an Orders of Possession for unpaid rent and cause and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit and to recover the cost of the filing fee.

The Tenant filed on August 10, 2016 seeking an Order to cancel the 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Landlord and the Landlord's Assistant. The Landlord and Assistant provided affirmed testimony. No one was in attendance on behalf of the Tenant despite this hearing initially being scheduled to hear the Tenant's application for Dispute Resolution.

The Landlord confirmed receipt of the Tenant's application and notice of hearing documents. The Landlord testified he personally served the Tenant with copies of the Landlord's application and notice of hearing documents on August 26, 2016, in the presence of his Assistant.

Based on the submissions of the Landlord and Assistant 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 for unpaid rent?
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 verbal month to month tenancy agreement that began in approximately December 2014. Rent of \$600.00 was payable on or before the first day of each month. The Tenant paid a total of \$250.00 as the security deposit in or before December 2014.

The Landlord testified that when the Tenant failed to pay the July 1, 2016 rent they served the Tenant a 1 Month Notice to end tenancy for repeated late payment of rent on August 1, 2016. Then when the August 2016 rent remained unpaid they personally served the Tenant a 10 Day Notice on August 19, 2016.

The Landlord testified they believe the Tenant or his son continues to reside in the rental unit and they have not paid the July, August, or September 2016 rent. The Landlord seeks an Order of Possession for as soon as possible and a \$1,800.00 Monetary Order for all of the outstanding rent (3 x \$600.00).

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 16 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 find the Tenant failed to prove the merits of his application and 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.

There is no evidence before me that would indicate the Tenant filed an application to dispute the 10 Day Notice to end tenancy that was personally served upon him on August 19, 2016. Therefore, the effective date of the 10 Day Notice is **August 29, 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, **August 29, 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.

As the Landlord has been issued an Order of Possession based on the 10 Day Notice there is no requirement to provide an analysis of the 1 Month Notice to end tenancy.

The Landlord claimed unpaid rent of \$1,200.00 (2 x \$600.00) that was due August 1, 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 July and August 2016 in the amount of **\$1,200.00**.

As noted above this tenancy ended **August 29, 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 September 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. The Landlord is required to minimize his losses by attempting to re-rent the unit as soon as possible, pursuant to section 7(2) of the *Act*. Therefore, I award the Landlord use and occupancy and any loss of rent for the full month of September 1, 2016 in the amount of **\$600.00**. If the Landlord suffers additional loss they are at liberty to file another application for that loss.

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*.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$250.00 deposit since December 2014.

Unpaid July and August 2016 Rent	\$1,200.00
Use & Occupancy & loss of rent September	600.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,900.00
LESS: Security Deposit \$250.00 + Interest 0.00	<u>- 250.00</u>
Offset amount due to the Landlord	<u>\$1,650.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$1,650.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$1,650.00** which may be enforced through Small Claims Court upon service to the Tenant.

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 **\$1,650.00**.

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: September 30, 2016

Residential Tenancy Branch

