



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for an order of possession and for a monetary order for unpaid rent.

On October 12, 2016, the landlord had made application for dispute resolution by direct request. The Arbitrator granted the landlord's application. The tenant applied for a review hearing on the grounds that the decision and order were obtained by fraud. Since the direct request proceeding is an ex parte proceeding, the Arbitrator ordered a participatory hearing to clarify the identified issues. Accordingly a review hearing was scheduled for this date – December 22, 2016. The decision and orders dated October 27, 2016 were suspended and therefore are of no force or effect.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issues to be decided

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

Background and Evidence

The parties agreed to the following: The tenancy started on July 01, 2016. The tenant moved in prior to July 01 and paid prorated rent for June 2016. The monthly rent is \$2,900.00 due in advance on the first of each month. A copy of the tenancy agreement was filed into evidence. Both parties agreed that at the start of the tenancy, the tenant gave the landlord 12 post-dated rent cheques.

The parties also agreed that the tenant had the permission of the landlord to carry out repairs and deduct the costs incurred from rent that was due on July 01, 2016. The

parties agreed that the balance of rent owed by the tenant for July 2016, after the appropriate deduction for the cost of repairs was \$1,407.90. Sometime in August 2016, the tenant gave the landlord a cheque in this amount, but dated it October 01, 2016.

The landlord stated that he did not notice the date on the cheque and since it was for the balance of rent owed for July 2016, he cashed it on August 30, 2016. The tenant testified that the bank contacted her regarding the landlord's attempt to cash a cheque prior to the date of the cheque. The tenant stated that she advised the bank to cancel the cheque. The tenant agreed that as of the date of this hearing the landlord had not received the balance of rent owed after the tenant deducted her cost to repair the rental unit.

The tenant filed a copy of the cheque dated October 01, 2016 along with a bank transaction slip that shows that a transaction took place on August 30, 2016. However the amounts on the cheque and the transaction slip do not match.

As of September 27, 2016, the tenant had not paid the balance of rent for July 2016 and on that date the landlord served the tenant with a 10 day notice to end tenancy for non-payment of rent. By October 12, 2016, the tenant still owed rent for July and the landlord made application by direct request, for an order of possession and a monetary order for rent.

The landlord also stated that the tenant's cheques for August and September cleared but the October rent cheque was returned for insufficient funds and therefore the landlord did not attempt to cash the rent cheques for November and December 2016. The tenant agreed that as of the date of the hearing, rent for the months of October to December 2016 was not paid. However the tenant also added that the landlord has post-dated cheques that he is at liberty to cash.

Analysis

Based on the sworn testimony of both parties, the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on September 27, 2016 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, 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 December 31, 2016. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to his claim of \$1,407.90 for unpaid rent. 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 December 31, 2016** and a monetary order in the amount of **\$1,407.90**.

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: December 22, 2016

Residential Tenancy Branch