



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent served October 24, 2016. He also seeks a monetary award for unpaid rent, for the removal of a shed and restoration of wiring changes made by the tenants.

At hearing the landlord withdrew his claims regarding the shed and wiring changes.

An attempt was made to mediate a settlement of the claims, but it was unsuccessful.

The tenant alleged that the matter had been settled between the parties a week or two before the hearing and that the landlord had told her he would cancel the hearing. The landlord denied it saying that the only agreement was to permit the tenant to pay the rent in two installments each month. It was my determination that though the parties had discussed settlement, there was no agreement on how much back rent was owed and that there had been no enforceable settlement between the parties before the hearing, nor was there an agreement to cancel the hearing. The hearing proceeded.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenancy ended as a result of the ten day Notice? What, if any rent is owed to the landlord by the tenant?

Background and Evidence

The rental unit is a three or four bedroom suite in one half of a duplex. The tenancy started March 1, 2016 for a one year fixed term at a monthly rent of \$1000.00, due on the first of each month. The landlord holds a \$500.00 security deposit.

The landlord issued a ten day Notice to End Tenancy in the government form. It was received by the tenant on October 24, 2016. The tenant did not pay the amount demanded in the Notice within five days nor did she apply to cancel the Notice within that time or at all.

The landlord testifies that as of October 1, 2016 the tenant owed \$50.00 outstanding rent. After that she paid \$400.00 on October 8, \$350.00 on October 15, \$400.00 on October 31 and \$400.00 on November 17. This is a total of \$1550.00 in payments. He says he is owed \$1450.00 including December rent of \$1000.00.

The tenant testifies and acknowledges the landlord's itemization of payment but says she also paid \$200.00 on November 8 and \$400.00 on November 23. She says she owes the landlord \$1250.00.

Analysis

Section 46 of the *Residential Tenancy Act* (the "*Act*") provides that a tenant in receipt of a ten day Notice to End Tenancy for unpaid rent or utilities has five days to either pay the amount demanded in the Notice or to make an application for dispute resolution seeking to cancel the Notice. The tenant did neither in this case.

The tenant says she thought that was what she was doing at this hearing. I don't accept that position. The government form ten day Notice makes it clear that the tenant must make her own application in order to challenge the eviction Notice.

The Notice also makes it clear that in the event the tenant neither pays nor makes application within the five day period, she is conclusively presumed to have accepted the end of the tenancy. That is the case here. By operation of law this tenancy ended on November 4, 2016. As the tenancy has ended, the landlord is entitled to an order of possession.

Regarding the rent, the initial burden of proving payment of a debt falls to the debtor; the tenant in this case. For that reason the *Act* requires that a landlord provide a receipt

for any cash payment from a tenant. The tenant has submitted no documentary evidence and has failed to establish that she has paid the landlord any money other than what the landlord testified to.

I find that the tenant owes the landlord \$1450.00 in rental arrears, including December 2016 rent.

I award the landlord \$1450.00, plus recovery of the \$100.00 filing fee for this application. I authorize him to retain the \$500.00 security deposit in reduction of the amount awarded. He will have a monetary order against the tenant for the remainder of \$1050.00.

Conclusion

The landlord will have an order of possession.

The landlord will have a monetary order against the tenant in the amount of \$1050.00.

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 21, 2016

Residential Tenancy Branch