



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing packages upon each other. The tenant testified that the Tenant's Application for Dispute Resolution was served upon the landlord in person. The landlord confirmed this to be accurate. The landlord testified that he served the Landlord's Application for Dispute Resolution by putting it in the tenants' mailbox at the residential property. The tenant denied receiving the Landlord's Application for Dispute Resolution, explaining that she gets mail from the upstairs tenants and not a mailbox.

Where a party seeks monetary compensation from the other, the application must be given to the other party in person or by registered mail as provided under section 89(1) of the Act. Leaving the landlord's Application for Dispute Resolution in a mailbox is not sufficient service for purposes of a Monetary Order. Accordingly, I did not consider the landlord's monetary claims against the tenants and those claims are dismissed with leave to reapply.

As for the landlord's request for an Order of Possession, section 55(1) of the Act provides that an Order of Possession may be provided to the landlord under a tenant's application where the Notice to End Tenancy is upheld or the tenant's application to cancel a Notice to End Tenancy is dismissed. Accordingly, I informed the parties that I would consider whether the tenancy is at an end for unpaid rent and whether the landlord is entitled to an Order of Possession under the tenant's Application for Dispute Resolution.

I noted that the landlord's application and the tenant's application had a spelling of the female tenant's first name that was different than the spelling as seen on the tenancy agreement and the 10 Day Notice. The tenant confirmed the spelling of her name is that which appears on the tenancy agreement and the 10 Day Notice. Accordingly, I amended the applications to reflect the correct spelling of the tenant's first name.

Issue(s) to be Decided

1. Should the 10 day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

Much of the testimony provided by the parties was in dispute; however, the parties provided consistent testimony as to following: a one year fixed term tenancy agreement was executed by the co-tenants requiring them to pay rent of \$1,200.00 on the first day of every month; and, the tenants were required to pay a security deposit of \$600.00. The parties provided consistent testimony that the tenants have not paid any rent to the landlord for the month of June 2017 and the tenant(s), and another person, continue to occupy the rental unit.

The tenant initially testified that the tenancy started on May 1, 2017 and the tenants paid \$600.00 for a security deposit and \$900.00 in cash on April 23, 2017 for rent due for May 2017 with a \$300.00 credit for painting and repairing items in the rental unit. The tenant pointed to the receipt issued by the landlord and provided as evidence. I noted that the receipt is dated April 25, 2017. Further, in subsequent testimony the tenant referred to the credit as being \$200.00 before quickly changing her testimony to say \$300.00.

The landlord testified that the tenancy started on April 1, 2017 and a \$225.00 payment toward the security deposit was made by the male tenant via e-transfer on March 17, 2017 with anticipation that the balance of the security deposit in the amount of \$375.00 would be paid by the female tenant's former landlord at a different property. The balance of the security deposit was not received from the tenant's former landlord or the tenants. The landlord testified that the female tenant made a partial rent payment of \$400.00 on April 25, 2017 toward rent for April 2017 and not \$900.00 as she claimed. The male tenant paid \$100.00 toward April 2017 rent and the tenants were provided a \$200.00 credit toward April 2017 rent for painting and cleaning the rental unit. Having

received \$500.00 in cash, plus the \$200.00 credit, the tenants remained \$500.00 short in the rent owed for April 2017. In addition, the landlord testified that no rent was received for May 2017 or June 2017.

The landlord issued a 10 Day Notice to End to End Tenancy for Unpaid Rent on April 27, 2017 indicating \$875.00 was outstanding as of April 1, 2017. The landlord submitted that this sum represents \$500.00 in outstanding rent and \$375.00 for the balance of the security deposit. The landlord testified that the 10 Day Notice was served in person to the female tenant on April 27, 2017. The tenant testified that she did not know how the 10 Day Notice was served and that she found it inside the rental unit. The tenant did not know the date she found it. I noted that the male tenant filed the Application for Dispute Resolution to dispute the 10 Day Notice on May 8, 2017. The tenant did not indicate when the 10 Day Notice was received in filing the Application for Dispute Resolution.

The landlord submitted that the receipt presented as evidence by the tenants was a forgery. The landlord acknowledged issuing a receipt but that it originally reflected a payment of \$400.00 toward rent but the \$400 was altered to look like \$900.00. The landlord explained that he wrote \$600.00 was paid for the security deposit at that time because he was still expecting the tenant's former landlord to forward that amount to him. On May 8, 2017 the tenant's former landlord wrote a letter informing the tenant that he would not be paying the security deposit.

After hearing the landlord's testimony and pointing out the 10 Day Notice was issued in April 2017 the tenant acknowledged that she erred in stating the tenancy started May 1, 2017 and that the landlord is correct that the tenancy started on April 1, 2017. When I pointed out that the tenant had only described payments of for the first month of tenancy and that I did not hear about rent paid for May 2017, the tenant then stated that rent for May 2017 was paid in cash and that the landlord did not issue a receipt. The tenant did not indicate the date when rent was paid for May 2017.

When I questioned the tenant's testimony that \$600.00 was paid for the security deposit yet the tenant's former landlord did not pay the landlord \$375.00, the tenant acknowledged that it was expected that her former landlord was to pay the security deposit of \$375.00 to the landlord and stated that when that did not happen she paid the remaining balance of \$375.00 in cash. The tenant testified that she did not receive a receipt for this cash payment but pointed back to the receipt dated April 25, 2017.

Upon questioning the tenant as to the source of funds for her rent and security deposit payments, the tenant stated that she obtained money from her bank account after

depositing her cheque from Income Assistance. I noted that the tenant did not produce any bank statements as evidence. The tenant claimed to have “several” witnesses as to the payment of rent and security deposit, but did not identify them; provide sworn statements from those witnesses, or call them to testify during the hearing.

The tenant attempted to speak several times about the various repairs or deficiencies in the rental unit that the landlord has not addressed and was of the position she is entitled to compensation. I repeatedly informed the tenant that the need for repairs is not a basis for withholding rent under the Act, except in very limited circumstances, and that she remains at liberty to file a separate Application for Dispute Resolution seeking compensation from the landlord but that these submissions are not relevant to the issue of unpaid rent.

As the hearing neared the end, I informed the parties that I was unsatisfied that the tenants paid the rent that was due to the landlord; that the tenancy would be ending for unpaid rent; and, that the landlord would be provided an Order of Possession. The tenant responded by stating she would be filing an appeal or Application for Review to get more time to move out.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a lawful right under the Act to make deductions from rent. The Act provides very limited and specific circumstances as to when a tenant may withhold rent. Having repair issues is not a basis to withhold rent unless the tenant has authorization to do so by the landlord or an Arbitrator. The tenants did not obtain authorization to withhold rent by an Arbitrator. While both parties spoke of the landlord authorizing a credit to be deducted from rent; the amount of the credit was in dispute with the tenant stating it was \$300.00 and the landlord stating it was \$200.00. Despite the \$100.00 discrepancy in the amount of the credit, the landlord has asserted that much more than \$100.00 remains outstanding April 2017 and that \$500.00 remains outstanding for April 2017. It follows that if the female tenant paid \$900.00 in April 2017 as she asserts rent would have been satisfied for April 2017 but that if only \$400.00 was paid by the female tenant as the landlord asserts, rent would be short by \$500.00 for April 2017. Since the tenant did not produce any other evidence or call her witnesses to testify, the receipt the tenant relies upon is a critical piece of evidence.

Upon review of the receipt the tenants produced as evidence, I find it clear that the amount of the rent payment appears to be altered as it has been written over. Upon close examination it appears that the amount could have originally read \$400.00.

Where a tenant fails to pay all of the rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. After receiving a 10 Day Notice a tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

It is undeniable that the landlord served the tenants with a 10 Day Notice since the tenants failed to dispute it. However, the date and method it was served was under dispute. After hearing from both parties, I find the landlord more credible than the tenant and I find I prefer the landlord's testimony that the 10 Day Notice was served on April 27, 2017. I found the landlord's testimony to be clear, straightforward, forthcoming and remained consistent throughout his testimony and consistent with the documentary evidence before me. In contrast, I found the tenant provided inconsistent and changing testimony, the tenant omitted information until I pointed out omissions or discrepancies in her testimony, and the tenant could not recall most of the relevant dates.

In light of all of the above, I accept the landlord's position that the rent receipt was altered and the tenants failed to pay \$500.00 of the rent for April 2017 and the landlord served the tenants with a 10 Day Notice on April 27, 2017. I also accept the landlord's testimony that the tenants did not pay the outstanding rent after receiving the 10 Day Notice. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

Section 55(1) provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The 10 Day Notice before me is duly completed by the landlord and is in the approved form and having dismissed the tenant's application to cancel the 10 Day Notice, I find the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service.

Conclusion

The tenant's application has been dismissed and the landlord is provided an Order of Possession effective two (2) days after service. The landlord's monetary claim against the tenants is dismissed with leave to reapply.

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: June 15, 2017

Residential Tenancy Branch