



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD, OLC, MNR, OPR

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities; orders for the landlords to comply with the Act, regulations or tenancy agreement; and, return of the security deposit. The landlords applied for an Order of Possession and Monetary Order for unpaid 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.

I noted that the tenant had provided the landlord's last name that was different than the last name provided by the landlord. The landlord explained that the tenant used his "short" name but that it is not his legal name. I amended the tenant's application to identify the landlord as provided by the landlord and as it appears on the tenancy agreement and the 10 Day Notice to End Tenancy for Unpaid Rent.

The landlords had provided documentary evidence in support of their claims. The landlord testified that it was left in front of the tenant's door on the ground on June 27, 2017. The tenant testified that he received it just this morning. I noted that the landlords had included a Monetary Order worksheet that appears to be an attempt to increase the landlord's claim for unpaid rent to include June 2017 and a request for unpaid utilities; however, the landlords did not submit an Amendment in the proper form, separate from evidence and served in a manner that complies with section 89(1) of the Act. Accordingly, I did not accept the Monetary Order worksheet dated June 27, 2017 as an amendment.

During the hearing the landlords requested their monetary claim be amended to include loss of rent for the months of June and July 2017 since the tenant remains in possession of the rental unit and has not paid rent for these months either. I confirmed with the tenant that he is still in possession of the rental unit. Accordingly, I found the landlord's oral request for amendment for loss of rent to be a reasonably foreseeable consequence of remaining in possession of the rental unit and I permitted this amendment. Since I did not consider the landlord's request for compensation for utilities the landlords are at liberty to make another Application for Dispute Resolution to seek utilities from the tenant. As for the landlord's documentary evidence, the tenant indicated that he had reviewed it but with a view to fairness, I have only relied upon the most relevant documentation which I confirmed with the tenant such as: the tenant's rent obligation and service of the 10 Day Notice upon him.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?
2. Are the landlords entitled to an Order of Possession for unpaid rent?
3. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?

4. Is it necessary to issue orders for compliance to the landlords?
5. Is the tenant entitled to return of the security deposit?

Background and Evidence

The parties executed a tenancy agreement and the tenant paid \$200.00 toward the security deposit on January 14, 2017. The one year fixed term tenancy was set to commence on February 1, 2017. The tenant is required to pay rent of \$1,800.00 on the first day of every month.

Both parties were in agreement that the tenant had paid \$200.00 toward the security deposit when the tenancy formed. The parties were in dispute as to whether the tenant ever paid the remaining balance due for the security deposit of \$700.00. The landlord testified that the tenant did not pay the remaining balance of \$700.00. The tenant stated that he paid \$700.00 in cash toward the security deposit approximately a month after the tenancy formed; however, he subsequently testified that he paid the \$700.00 balance of the security deposit with his rent payment on April 1, 2017.

The parties provided consistent testimony that on May 17, 2017 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice"). The 10 Day Notice indicates the tenant failed to pay rent of \$3,600.00 for the months of April and May 2017 and the tenant owed \$500.00 in utilities as of May 1, 2017.

The landlords submitted that the tenant provided a cheque dated May 8, 2017 in the sum of \$3,600.00 for April and May 2017 rent but the cheque was dishonoured on May 9, 2017. After serving the tenant with the 10 Day Notice the tenant did not pay the outstanding rent and did not pay any monies toward rent for the months of June or July 2017. The landlords testified that the tenant has paid no monies for utilities either.

The tenant testified that he paid \$1,800.00 for rent, plus \$700.00 for the security deposit, in cash, on or about April 1, 2017. The tenant testified that he has paid the \$1,800.00 rent for May 2017, June 2017 and July 2017 in cash on or about the first day of these months. The tenant testified that he retrieved the cash from his bank account; however, he did not submit his bank account statements or other documentary evidence to support his position. The tenant stated that he had provided the landlord with cheques but that he asked the landlord to not deposit the cheques since he had changed bank accounts but the landlord went ahead and tried to deposit one of the cheques and it did bounce.

The tenant testified that the payments the tenant gave to the landlord for the security deposit and the rent were taken by the landlords and applied to utilities. The tenant stated that utilities are included in rent. I noted that in the tenant's details of dispute he wrote that he was to pay 50% of utilities. The tenant stated that a third person completed the tenant's Application for Dispute Resolution for him and that was a clerical error.

The tenant claims he has a text message he received from the landlord acknowledging receipt of the \$700.00 security deposit payment and payment for rent or utilities but acknowledged he had not provided a copy of the text message as evidence for this proceeding. I asked the tenant for the date he received the text message. The tenant responded by saying he did not have his phone with him.

The landlord acknowledged that there was an exchange of text messages with regard to the landlord picking up money from the tenant but that when the landlord arrived at the rental unit the tenant did not answer the door and the landlord did not collect any money.

I noted that the tenant had not made any mention of paying the outstanding rent when he filed his Application for Dispute Resolution and that the tenant's submission referred to single people living in the basement suite and the landlord's request for the tenant to pay utilities without showing the tenant copies of the bills. The tenant explained that since he had paid the rent, rent was not an issue under dispute.

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 violates the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent.

Where a tenant does not pay all of the rent that is due to the landlord, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. Upon receipt of a 10 Day Notice the tenant has five days to pay the outstanding rent or file an Application for Dispute Resolution to dispute it. The tenant filed an Application for Dispute Resolution to dispute the 10 Day Notice within five days of receiving it.

The tenant is the position that all of the rent has been paid by the tenant. Where a tenant asserts that they have satisfied their rent obligation, the tenant bears the burden to prove the rent was paid. The tenant claims to have obtained the cash payments of \$2,600.00 in April 2017 and \$1,800.00 for May's rent from his bank account; yet, he did not provide copies of his bank statements or withdrawal notices or some other form of corroborating evidence to substantiate his position. The tenant claims to have a text message to prove payment was made but the tenant did not supply a copy of it, and the tenant was not able to provide me with details such as when it was received. I also found the tenant's submissions inconsistent. For example, the tenant claimed to have paid the balance of the security deposit approximately one month after the tenancy formed, which would mean payment was made sometime in February 2017, but then the tenant subsequently provided testimony that he made the payment on April 1, 2017. The tenant also claimed to have paid rent for April 2017 on or about April 1, 2017 which appears to be inconsistent with the tenant providing a cheque for April rent dated May 8, 2017. The tenant also provided inconsistent submissions with respect to his obligation to pay utilities, or a part thereof. Considering the tenant's inconsistent submissions and lack of corroborating evidence I find the tenant failed to satisfy me that he paid the rent that was due to the landlords for April and May 2017. Accordingly, I dismiss the tenant's request that I cancel the 10 Day Notice.

Having found the tenant's testimony inconsistent, unreliable and unsubstantiated, I prefer the landlord's testimony over that of the tenant and I accept that rent has not been received for the months of June 2017 or July 2017 either.

In light of the above, I provide the landlords with an Order of Possession effective two days after service. I also grant the landlord's request for a Monetary Order for unpaid and/or loss of rent for the four months of April 2017 through July 2017 in the amount of \$7,200.00 and I award the landlord's recovery of the \$100.00 they paid for their application.

Since the tenancy has ended, I find the tenant's request for orders for compliance to be moot and I dismiss that portion of the tenant's application.

As for the tenant's request for return of the security deposit, I find that request pre-mature. Under section 38 of the Act, a landlord is not required to take action with respect to the security deposit until the tenancy ends or the tenant provides the landlord with a forwarding address in writing, whichever date is later. I did not hear any evidence to suggest the tenant has provided a forwarding address to the landlord in writing and the tenant is still occupying the rental unit. The landlords did not request authorization to retain the security deposit in partial satisfaction of the unpaid rent. Accordingly, the security deposit remains in trust at this time, to be administered in accordance with section 38 of the Act.

Conclusion

The tenancy has ended for unpaid rent and the landlords have been provided an Order of Possession effective two (2) days after service.

The landlords are provided a Monetary Order for unpaid and/or loss of rent, plus recovery of the filing fee, in the sum of \$7,300.00.

The security deposit remains in trust to be administered in accordance with the Act.

The tenant's request for orders for compliance 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: July 12, 2017

Residential Tenancy Branch