



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, FF

Introduction

This is a Review Hearing Decision arising from an Ex Parte hearing conducted on October 18, 2017. The original dispute was regarding a notice to end tenancy for unpaid rent. Based on the Landlords evidentiary material, the adjudicator granted the Landlord an order of possession and a monetary order on October 18, 2017.

On October 26, 2017, the Tenant submitted an Application for Review Consideration on the basis of fraud. The Tenant submitted that rent for September 2017 was paid in full. The Tenant submitted that the Landlord fraudulently obtained an order of possession and a monetary order for September 2017, rent.

On October 30, 2017, an Arbitrator heard the Application for Review Consideration and found that the Tenant provided sufficient evidence that the Decision was obtained by fraud and granted a review hearing. The Arbitrator suspended the October 18, 2017, Decision and Orders until a new hearing is completed.

The Tenant and the Landlord attended the new hearing.

Preliminary and Procedural Matters

The parties testified that the Tenant moved out of the rental unit at the end of November, 2017

Issues to be Decided

- Did the Landlord receive the rent owing under the tenancy agreement for September 2017?
- Is the Landlord entitled to an order of possession for the rental unit?

Background

In the initial Decision the adjudicator considered the documentary evidence submitted by the Landlord and found that the parties entered into a tenancy agreement where the Tenant is obligated to pay the monthly rent in the amount of \$1,350.00, by the first day of each month.

The adjudicator accepted evidence that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 15, 2017.

The adjudicator found that the Tenant did not dispute the 10 Day Notice or pay the rent owing within 5 days of receiving the Notice, and is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice. The adjudicator granted the Landlord an Order of Possession and a Monetary Order in the amount of \$1,450.00, for the unpaid rent and the cost of the application.

New Hearing

The Tenant was granted a review hearing on the basis of fraud. The Tenant provided two receipts dated September 2, 2017, in the amount of the outstanding rent shown on the 10 Day Notice.

The Landlord testified that the Tenant did make a payment of \$1,350.00 towards rent on September 2, 2017; however, the rent was applied to unpaid rent for August 2017. The Landlord testified that the Tenant had failed to pay the rent for August 2017, when it was due and he applied the rent payment to August 2017. The Landlord stated he wrote "for use and occupancy" on the receipts dated September 2, 2017 because the rent payment was not for September 2017, rent.

The Landlord submitted that the Tenant did not pay the rent owing for September 2017.

In reply, the Tenant acknowledged that he did not pay the rent owing under the tenancy agreement for the month of August 2017 when it was due. The Tenant submitted that

the monetary order for \$1,450.00 should be cancelled because he paid the amount stated within the 10 Day Notice within 5 days of receiving the Notice.

Analysis

Section 62 of the Act provides that the director has authority to determine:

- (1)(a) disputes in relation to which the director has accepted an application for dispute resolution, and*
- (b) any matters related to that dispute that arise under this Act or a tenancy agreement.*
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.*
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

After considering the testimony and evidence before me, I make the following findings:

While I find that the Tenant technically paid the amount of rent listed on the 10 Day Notice within 5 days of receiving the 10 Day Notice; however, the Tenant had failed to pay the rent for the previous month. I find that it is appropriate for the Landlord to apply the rent payment to the arrears of rent that were owing to the Landlord.

The Tenant's submission that the monetary order should be cancelled is untenable. The Tenant testified that he failed to pay the August 2017, rent of \$1,350.00. Pursuant to section 62 (3) of the Act I find that the Tenant is obligated to pay the Landlord the rent of \$1,350.00 owing under the tenancy agreement for September 2017, rent.

I find that the monetary order issued on October 18, 2017, is a valid order and is in full force and effect.

Since the Tenant moved out of the rental unit at the end of November 2017, prior to this Review Hearing, the tenancy has ended and there is no need to give further consideration to validity of the order of possession granted to the Landlord on October 18, 2017.

Conclusion

The tenancy ended when the Tenant moved out of the rental unit prior to the Review Hearing. There is no need to give further consideration to the order of possession granted to the Landlord on October 18, 2017.

The Tenant is obligated to pay the Landlord \$1,350.00 for unpaid September 2017, rent. The monetary order issued on October 18, 2017, is a valid order and is in full force and effect.

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: January 17, 2018

Residential Tenancy Branch