



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, CNC, RP*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent. The tenant applied to cancel the notices to end tenancy for non-payment of rent and for cause and for an order directing the landlord to carry out repairs.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of the other's application for dispute resolution and evidence. I find that evidence was served to both parties in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to an order directing the landlord to carry out repairs?

Background and Evidence

The parties agreed that the tenancy started in August 2018 and that there is no written tenancy agreement. The parties did not agree on the amount of monthly rent. The landlord stated that the rent is \$2,000.00 payable on the first of each month while the tenant stated that the rent is \$1,400.00.

The rental unit is located on the lower level of the rental home. The landlord rents the entire home from the owner and occupies the suite on the upper level. The landlord has rented out the lower level to the tenant.

The parties agreed that from the start of tenancy in August 2018 the tenant paid rent in the amount of \$2,000.00 until June 01, 2019 when the tenant started paying \$1,400.00. The tenant stated that he found out that the landlord was paying rent in the total amount of \$2,800.00 and therefore he decided that his rent should be half of the total amount.

The tenant agreed that he did not have an order from the Residential Tenancy Branch authorizing him to lower his rent to \$1,400.00 and that he did not have the landlord's permission in writing to lower the rent.

On June 01, 2019 the tenant paid \$1,400.00 for rent. On July 03, 2019, the landlord served the tenant with a notice to end tenancy for \$2,000.00 in unpaid rent. The landlord agreed that she had written \$2,000.00 in error and that it should be \$600.00 in unpaid rent. The tenant disputed the notice in a timely manner and continued to occupy the rental unit. On July 01, 2019, the tenant paid \$1,400.00 for rent.

The landlord has applied for an immediate order of possession and for a monetary order in the amount of \$1,200.00.

Analysis

Based on the testimony of both parties, I find that the monthly rent is \$2,000.00 per month and that the tenant paid \$600.00 short for each of the months of June and July 2019.

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on June 03, 2019 and did not pay rent within five days of receiving the notice to end 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 2 days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I further find that the landlord is entitled to \$1,200.00 in 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.

Since the tenancy is ending, the tenant's application for an order directing the landlord to carry out repairs is moot and accordingly dismissed.

Conclusion

I grant the landlord an order of possession effective 2 days after service on the tenant and a monetary order in the amount of \$1,200.00.

The tenant's application is dismissed in its entirety.

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 09, 2019

Residential Tenancy Branch