



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, OLC, MNR, FF*

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 and the filing fee. The tenant applied to cancel the ten-day notices to end tenancy for non-payment of rent, for an order directing the landlord to comply with the *Act* and for the filing fee.

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 tenant represented himself. The landlord was represented by his agents.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials 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?

Background and Evidence

The tenancy started on February 01, 2018. The monthly rent is \$1,800.00 due on the first of each month.

On September 01, 2019 the tenant failed to pay rent. On September 18, 2019, the landlord served the tenant with a 10-day notice to end tenancy. The tenant amended his application to include his dispute of this notice.

The tenant continued to reside in the rental unit without paying rent. The tenant agreed that he did not pay rent that was due on October 01, 2019 and was served with another notice to end tenancy, on October 02, 2019.

The tenant agreed that at the time of this hearing he owed rent for the months of September and October 2019. The tenant also stated that he planned to move out on November 01, 2019. The landlord agreed to allow the tenancy to continue till this date.

The landlord has applied for an order of possession effective November 01, 2019 and for a monetary order for unpaid rent in the amount of \$3,600.00 plus \$100.00 for the filing fee.

Analysis

Landlord's Application

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.

The tenant received the notice to end tenancy for unpaid rent, on September 18, 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 by 1:00 pm on November 01, 2019. The order may be filed in the Supreme Court for enforcement.

Since I have upheld the notice to end tenancy for non-payment of rent, it is not necessary to address the other notice to end tenancy.

The tenant agreed that he owes rent for September and October 2019 and therefore I award the landlord her claim for unpaid rent. Since the landlord has proven her case, I award the landlord \$100.00 for the recovery of the filing fee. Overall the landlord has established a claim of \$3,700.00.

Accordingly, I grant the landlord a monetary 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.

Tenant's application:

Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act* is moot and accordingly dismissed. Since the tenant has not proven his claim, he must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective by **1:00 pm on November 01, 2019**. I also grant the landlord a monetary order in the amount of **\$3,700.00**.

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: October 22, 2019

Residential Tenancy Branch