



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, DRI, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to sections 55, 67, 43, 46, 32 and 72 of 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 notice to end tenancy for non-payment of rent, to dispute a rent increase, for an order directing the landlord to carry out repairs and for the recovery of 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 parties represented themselves.

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*.

During the hearing it was brought to my attention that the tenant had moved out of the rental unit. Therefore, the tenant's application to cancel the notice to end tenancy, to dispute a rent increase and for an order directing the landlord to carry out repairs is moot and accordingly dismissed. Therefore, this hearing only dealt with the landlord's application for an order of possession and for a monetary order for unpaid rent.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The background facts are generally undisputed. The rental unit is an apartment in a rental complex containing 18 units. This month-to-month tenancy began on December 01, 2019. The monthly rent was \$1,100.00 payable on the 1st day of each month. The tenants were hired by the landlord to manage the rental complex and were given a rent rebate of \$400.00. The parties agreed that the employment ended on June 12, 2020.

When employment ended, the rental rebate of \$400.00 no longer applied and the tenant was required to pay the full rent of \$1,100.00. The tenant argued that rent increases were illegal during the Pandemic. I explained to the tenant that this was not a rent increase but was a loss of the rental rebate that was provided by the employer during employment and was no longer applicable when employment ended.

The landlord testified that the tenant paid partial rent for the months of June, July and August 2020. The tenant agreed that as of September 01, 2020 the tenant owed \$1,760.00 in unpaid rent. The parties entered into a repayment agreement on September 01, 2020. Pursuant to the terms of the agreement, the tenant was required to pay outstanding rent in installments of \$176.00 starting October 01, 2020 and ending July 01, 2021.

The tenant failed to pay rent that was due on September 01, 2020. On September 02, 2020, the landlord served the tenant with a notice to end tenancy for nonpayment of rent. The tenant disputed the notice in a timely manner and continued to occupy the rental unit without paying rent for October 2020.

The landlord stated that he had video recordings of the tenant loading a U-Haul truck on October 03, 2020 and making multiple trips to remove items from the rental unit. The landlord noticed that the tenant's vehicles were not parked inside the complex for a couple of weeks and he posted a 24-hour notice of inspection on the door of the rental unit. On October 09, 2020, the landlord visited the rental unit and found that most of the tenant's belongings were gone and the unit appeared to be vacant.

At first the tenant denied that he had moved out, but later in the hearing he agreed that he had. The landlord requested for an order of possession effective immediately. The tenant requested additional time to remove the remainder of his belongings and the landlord agreed to allow the tenant to access the unit for the next 3 days. The parties agreed to meet at the rental unit on October 19, 2020 at 2:30 pm to hand over keys and do a final inspection.

The tenant agreed that he had not paid the first installment of \$176.00 due on October 01, 2020, pursuant to the repayment agreement, signed by the tenant on September 01, 2020. The landlord stated that the tenant had not paid rent for September and October 2020 and has applied for a monetary order in the amount of \$2,200.00 for unpaid rent plus \$100.00 for the filing fee. The landlord has also applied for an order of possession effective 2 days after service on the tenant.

The tenant has applied for the recovery of the filing fee he paid to make this application.

Analysis

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 02, 2020 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 two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

The tenant agreed that he owed rent in the amount of \$1,760.00 prior to September 01, 2020, for which the parties entered into a repayment agreement. That repayment agreement stands, and the tenant is legally bound to pay the amount owed in installments of \$176.00, on the first of each month for the term of the agreement. Since the tenant failed to pay the first installment on October 01, 2020, the tenant must pay this amount immediately. The tenant must continue to make payments on the first of each month. The last payment is due on July 01, 2021.

I accept the landlord's testimony that the tenant did not pay rent for September 2020 and that prompted the landlord to serve the tenant with a 10-day notice to end tenancy. The tenant also failed to pay rent on October 01, 2020. Based on the above, I find that the landlord is entitled to a monetary order in the amount of \$2,200.00 for unpaid rent. Since the landlord has proven his claim, I award the landlord the recovery of the filing fee of \$100.00.

Overall, the landlord has established a claim of \$2,300.00 for unpaid rent and the filing fee. 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 tenant is unsuccessful in his application, he must bear the cost of filing his own application.

Conclusion

I grant the landlord an order of possession effective **two days** after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,300.00**.

The repayment agreement dated September 01, 2020 remains in full force and effect.

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: October 16, 2020

Residential Tenancy Branch