



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, 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 for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

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 and the filing fee? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 15, 2023. The rent as per the tenancy agreement is \$2,000.00 per month due on the first of each month. The tenant paid a security deposit of \$1,000.00.

The tenant testified that the landlord's advertisement of the availability of the rental unit stated that rent would be \$1,700.00 per month. The landlord agreed that this was the case. The landlord also stated that when the tenant contacted her, she provided the tenant with a virtual tour.

The landlord testified that she informed the tenant that due to multiple responses to her advertisement, she was able to obtain a tenant for \$2,000.00 per month and accordingly, she had set the rent at \$2,000.00 per month.

The tenant denied having been informed of the increased rent prior to signing the tenancy agreement. Both parties signed the tenancy agreement at a rent of \$2,000.00 per month. The tenant moved in on May 15, 2023, but despite requests for rent for the latter two weeks of May, the tenant did not pay.

The tenant paid rent on June 01 and July 01, 2023, in the amount of \$2,000.00 for each month. On August 01, 2023, the tenant paid \$1,800.00 for rent. At the tenant's request, the parties negotiated the rent and the parties agreed to set the rent at \$1,850.00 per month. However, the tenant continued to pay \$1,800.00 for the following months. On February 02, 2024, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent in the amount of \$2,400.00.

The tenant agreed that she had paid \$1,800.00 starting August 01, 2023, instead of \$1,850.00 which was the negotiated rent. Both parties agreed that at the time of the hearing, the tenant owed \$1,325.00 in unpaid rent. This amount included rent for May 2023 and a refund of \$300.00 for the months of June and July 2023, when the tenant paid \$2,000.00 for rent.

The landlord declined to negotiate an agreement as presented by the tenant. The tenant offered to pay all outstanding rent and moving forward the tenant agreed to pay rent in the amount of \$1,850.00 in a timely manner. The tenant requested the landlord to cancel the notice to end tenancy. The landlord maintained that the tenancy must end but gave the tenant additional time to find new accommodation. The landlord requested an order of possession for May 31, 2024.

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 February 02, 2024, 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 p.m. on May 31, 2024. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$1,325.00 for unpaid rent. Since the landlord is successful in this application for dispute resolution, the landlord is also entitled to the recovery of the filing fee of \$100.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,425.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **by 1:00 pm on May 31, 2024**. I also grant the landlord a monetary order in the amount of **\$1,425.00**.

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: March 14, 2024

Residential Tenancy Branch