



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to a cross- application by the landlord and the tenant. The landlord seeks an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

The tenant seeks to cancel a 10 Day Notice For Unpaid Rent (the Notice) served on the tenant on September 23, 2009 by posting the Notice on the tenant's door.

The landlord's application, citing one of the two tenants as respondent, was set for a participatory hearing via teleconference for November 23, 2009 at 11:00 a.m. The applicant of the tenant's application claims to be the lawful and primary tenant in the tenancy in dispute and, along with the landlord consented to being added as a party to the landlord's application. Both the landlord and the tenant consented to their respective applications being heard together as cross-applications. Therefore, the parties were apprised that, the November 23, 2009 hearing is not required and will not proceed.

Both, the tenant and the landlord attended the hearing and were aptly represented and aware of the issues involved. Each party participated with submissions and solemnly affirmed testimony.

As a preliminary matter, I accepted the tenant's request for more time to file their application on the basis that the tenant began their filing process on the 5th day of the permitted time to file for dispute resolution.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 01, 2005 and was between the landlord and both named tenants – husband and wife. The wife subsequently adopted the last name of the male tenant upon marriage (nee:). Rent in the amount of \$690 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$310. The tenant failed to pay rent in the month(s) of August 2009 and on September 23, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of September, October and November 2009. The quantum of the landlord's monetary claim is for the unpaid rent in the amount of **\$2760**, and also seeks immediate possession of the rental unit.

The husband tenant claims that his wife gave notice to the landlord that *she alone* was moving out of the rental unit on July 31, 2009. The tenant claims he was temporarily out of town due to marital issues when his wife moved out. Upon return, the husband claims he tried to pay the building manager the rent for August, but the manager refused to accept it, saying that the tenant on the tenancy agreement had now moved and that the husband now had to also vacate. The husband claims he tried to explain to the manager that he was the primary tenant in the tenancy, and the hearing was provided with a tenancy agreement, which indeed shows the husband as the tenant, and the (now departed) wife as the additional adult occupant of the unit. The tenant claims that the manager again refused to take his rent for September 2009 and consequently issued the rental unit with a 10 Day Notice to End for Unpaid Rent. The building manager disputed the husband's testimony, stating the husband did not offer to pay the rent when due in August and September 2009. The building manager also testified that the husband is not the lawful tenant, and that throughout the tenancy, the wife paid the rent via payments from the Ministry of Housing and Social Development, and therefore the husband had to, now, vacate.

Analysis

Based on the testimony of the landlord and the tenant, I find I prefer the testimony of the tenant, and I find that the tenant was served with a notice to end tenancy for non-payment of rent, but I find the notice was not issued validly. I find the evidence in this matter clearly indicates that the husband in this tenancy was indeed the primary tenant on the tenancy agreement from the outset of the tenancy and that the landlord only came to assume the wife was the principal tenant, and therefore refused payment of rent from the husband / tenant. As a result, I find the Notice to End was not issued in good faith and for its intended purpose. I hereby order the Notice to End dated September 23, 2009 is null and of no effect, and effectively Cancelled.

However, I find the tenant has not paid the outstanding rent for the past four (4) months, for a myriad of reasons, only initially because the landlord refused to accept it.

Based on the above facts I find that the landlord is entitled to the unpaid rent and I grant the landlord a Monetary Order for its immediate payment. As for the monetary order, I find that the landlord has established a claim for **\$2760** in unpaid rent. I decline to grant the landlord recovery of the filing fee of \$50.

Conclusion

The Notice to End the Tenancy is cancelled and the tenancy continues.

I order that the landlord retain the security deposit and interest of \$320.97 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$2439.03**.

If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Should the tenant not pay any rent due, the landlord is at liberty to issue a valid 10 Day Notice for Unpaid Rent.

Dated November 17, 2009.