



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: *OPR, CNR, MNR, OLC, RR, 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, for compensation and a rent reduction.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

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 compensation and a rent reduction?

Background and Evidence

The tenancy started in October 2008. The monthly rent is \$1,200.00 payable on the first of each month. The landlord is a numbered company owned by three partners. By prior arrangement the tenant paid rent directly into the bank account of the landlord.

On December 10, 2010, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent in the amount of \$5,250.00. The landlord stated that the tenant fell behind in rent owed, starting in March 2010. The landlord stated that the amount of rent owed increased with time and the tenant's subsequent payments were credited to the back log owed.

The tenant stated that he paid all rent and filed bank statements which show withdrawals, that the tenant stated were for rent. The tenant stated that he would deposit the money directly into the landlord's account and filed bank slips as evidence of having done so. However, the tenant filed bank slips for some months only and the landlord acknowledged having received payments that the tenant had evidence for.

The tenant stated that in summer, the landlord left town and the tenant made payments to an agent of the landlord. The landlord denied having appointed an agent in his absence and stated that the tenant was required to deposit the rent into his bank account. The tenant filed a copy of a cheque dated May 01, 2010, made out in the agent's name for the amount of \$350.00.

Despite the landlord's claim that the tenant owes rent starting from March 2010, he has applied for rent owed for the period of August 2010 to January 2011. The landlord stated that the tenant paid rent for the following months in 2010 in the following amounts:

| | Month | Amount paid | Amount Owed |
|----|--------------|-------------------|-------------------|
| 1. | August | \$800.00 | \$400.00 |
| 2. | September | \$1,300.00 | -\$100.00 |
| 3. | October | \$0.00 | \$1,200.00 |
| 4. | November | \$2,400.00 | -\$1,200.00 |
| 5. | December | \$0.00 | \$1,200.00 |
| 6. | January 2011 | \$0.00 | \$1,200.00 |
| | Total | \$4,500.00 | \$2,700.00 |

The tenant filed evidence to show that in November he made two deposits of \$1,200.00 each into the landlord's account. The tenant stated that he had paid rent and had some deposit slips, one rent receipt and a copy of a cheque made out to the alleged agent of the landlord.

The tenant also filed evidence to show that he had made out a money order to the landlord dated January 07 in the amount of \$1,200.00. The tenant stated that the landlord refused to accept rent for January. The landlord denied having been offered a money order and stated that the tenant could have deposited the money into his bank account.

The landlord has applied for an order of possession and for a monetary order in the amount of \$5,250.00.00 which consists of unpaid rent for the period of August 2010 to January 2011.

Analysis

In his application for dispute resolution, the landlord did not make a monetary claim for unpaid rent for the months prior to August 2010. Therefore, I will consider whether the tenant paid rent in full, only for the period of August 2010 to January 2011.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant claims that all rent is paid and the landlord claims that the tenant owes rent. The tenant also claims that he paid rent for some months to an agent and the landlord denies having appointed an agent to collect rent. Based on the documentary evidence in front of me I find that the tenant has not proven that he has paid full rent for the months of August 2010 to January 2011. The tenant has also not proven that he was instructed to make rent payments to an agent. I find that as per the arrangement between the two parties, the tenant could have simply deposited his rent directly into the landlord's account and filed bank slips as evidence of having done so.

Therefore I find that the tenant owes the landlord \$2,700.00 in rent for the period of August 2010 to January 2011.

The tenant received the notice to end tenancy on December 10, 2010 and did not pay overdue rent as of the date of this hearing. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective January 31, 2011. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$2,700.00 for unpaid rent. Since the landlord has proven his claim, he is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of **\$2,750.00**. 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 on or before **1:00 p.m. on January 31, 2011**. I also grant the landlord a monetary order in the amount of **\$2,750.00**. Since the tenancy is coming to an end, the tenant's application for a reduction in rent is moot.

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: January 18, 2011.

Residential Tenancy Branch