



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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. 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.

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

Background and Evidence

The landlord and tenant entered into a tenancy agreement on August 01, 2010. The rent is \$3,000.00 per month due on the first day of each month. The tenancy agreement indicates that the tenant paid a security deposit of \$1,500.00. The tenant stated that he had a verbal agreement with the landlord that he was not required to pay the security deposit and therefore in the first month of tenancy, he paid \$3,000.00 for rent in full. The landlord denied having waived the requirement for a security deposit and stated that the tenant paid \$1,500.00 towards rent and the balance was the security deposit.

The landlord maintains that the tenant owes \$1,500.00 for rent for August, while the tenant argues that rent for August was paid in full and that the landlord waived the payment of the security deposit.

On March 04, 2011, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

The tenant did not dispute that he owed rent in the amounts as follows:

1.	December 2010	\$1,000.00
2.	January 2011	\$1,000.00
3.	February 2011	\$3,000.00
4.	March 2011	\$3,000.00
	Total	\$8,000.00

The landlord has applied for an order of possession effective immediately and for a monetary order in the amount of \$9,500.00.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy on March 04, 2011 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 two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

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 stated that he had paid rent in full for August 2010 while the landlord denied having received full rent and is claiming \$1,500.00 in unpaid rent for August. The tenant did not file any documentary evidence to support his testimony and therefore has not met the burden of proof. Accordingly on a balance of probabilities, I find that the tenant owes \$1,500.00 for rent for August.

The tenant agreed that he owed rent in the amount of \$8,000.00. Therefore, I find that the tenant owes a total of \$9,500.00 and 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.

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 **\$9,500.00**.

The tenant has not proven his case and must therefore bear the cost of filing this application.

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: April 01, 2011.

Residential Tenancy Branch