



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, OLC, 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 to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*. 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 an order directing the landlord to comply with the *Act*?

Background and Evidence

The landlord and tenant entered into a tenancy agreement in November 2010. Neither party filed a tenancy agreement into evidence. The rent is \$795.00 per month due on the first of each month.

The tenant testified that the landlord enters her rental unit when she is not at home and things have gone missing. The landlord stated that she last entered the rental unit to show the unit to a prospective tenant, when this tenant indicated that she wanted to move out. The landlord stated that she gave the tenant verbal notice.

The tenant agreed that she was having difficulty paying rent on time but the landlord agreed to allow her to pay rent late. The landlord denied having had this conversation with the tenant. On April 01, 2012, the tenant failed to pay rent. On April 02, 2012, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant stated that she was told by an information officer to wait for the outcome of this hearing before paying rent.

As of the date of the hearing (April 25, 2012), the tenant had not paid rent for April.

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 April 02, 2012 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.

I find that the landlord has established a claim of \$795.00 for unpaid rent and \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$845.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is ending, the tenant's application for an order directing the landlord to comply with the *Act* is moot and accordingly dismissed.

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 **\$845.00**

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 25, 2012.

Residential Tenancy Branch