



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, OPR, MNR, MND, FF

Introduction

This hearing dealt with cross applications. The tenant had filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and authorization to reduce rent due to plumbing issues. The landlord filed for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and plumbing costs.

The tenant was not present at the commencement of the hearing but the landlord was. I proceeded to hear from him with respect to service of hearing documents and the landlord verbally confirmed that he still requires the Orders requested as the tenant continues to reside in the unit and has not paid rent. The tenant appeared at the hearing approximately six minutes after it commenced and I summarized the information I had heard up to that point. Both parties were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

The tenant's application was amended to reflect the correct street number of the rental unit address.

Issue(s) to be Decided

1. Did the tenant present a basis to cancel the 10 Day Notice?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to monetary compensation for unpaid rent and plumbing costs?
4. Is the tenant entitled to a rent reduction for plumbing issues?

Background and Evidence

The tenancy commenced November 16, 2012 for a fixed term set to expire November 30, 2013. The tenant is required to pay rent of \$950.00 on the 1st day of every month. The tenant began falling behind in her rent payments and was unable to fulfill a

repayment arrangement she made with the landlord. On June 4, 2013 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant at the rental unit via Purolator Courier. The tenant did not accept or pick up the couriered package. On June 6, 2013 the landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. Both 10 Day Notices indicate the tenant owed \$1,800.00 in rent as of June 1, 2013.

The tenant did not pay the outstanding rent and has not paid any rent for the month of July 2013 but continues to reside in the rental unit.

The tenant filed to dispute the Notice on the basis only 1 page of the 10 Day Notice was posted to her door. During the hearing the tenant stated the 10 Day Notice was not signed by the landlord. The tenant did not serve the Branch or the landlord with a copy of the document she found posted on her door. In the absence of a copy of the Notice the tenant received, I informed the parties that I would rely upon the 10 Day Notices served upon the Branch and the tenant with the landlord's evidence package. I noted that the landlord's copies of the 10 Day Notices were signed and included both pages. The landlord had also provided submissions from his agent indicating both pages were posted to the door. The landlord affirmed that both pages were included in the package couriered to the tenant.

The tenant acknowledged that she has not paid the rent due to personal circumstances. The tenant agreed to vacate the rental unit by July 15, 2013. The landlord was agreeable to permitting the tenant occupancy July 15, 2013.

The landlord requested compensation for unpaid rent of \$1,800.00 as indicated on the 10 Day Notices and \$950.00 for loss of rent for the month of July 2013. The tenant indicated she was willing to compensate the landlord for rent owing up to July 15, 2013. After discussion with the tenant about the tenant's obligations under the Act and tenancy agreement the tenant was agreeable to compensating the landlord for the month of July 2013.

The tenant requested her security deposit be used to offset a portion of the rent owed to the landlord as she promised to leave the rental unit clean. The landlord was agreeable to this request.

Finally, the landlord and tenant were willing to waive or withdraw their respective claims concerning issues with the plumbing.

Analysis

Any party that files an Application for Dispute Resolution is responsible for serving all available and relevant evidence to support their position to the Branch and the other party. Where a tenant files to dispute a Notice to End Tenancy I can think of no other document that is more relevant than the Notice to End Tenancy that is the subject of the dispute. In this case, the tenant did not serve a copy of the Notice she received as evidence for her request to cancel the Notice. Therefore, I dismiss this portion of her Application due to a lack of insufficient evidence.

I find the landlord is entitled to an Order of Possession effective July 15, 2013 based upon the following:

- The tenant's request to cancel the Notice has been dismissed and the landlord requested an Order of Possession during the hearing.
- The landlord served a copy of both pages of a signed 10 Day Notice to the Branch and the tenant in the landlord's evidence package.
- The tenant acknowledged the reason for not paying the rent when due or at any time after receiving the 10 Day Notice was due to personal circumstances and her inability to pay.
- Both parties were agreeable to the tenant vacating the rental unit by July 15, 2013.

I find the landlord entitled to the unpaid rent of \$1,800.00 that both parties agreed was outstanding as of June 2013. I also award the landlord \$950.00 for loss of rent for the month of July 2013 as the tenant has continued to occupy the rental unit into July 2013 despite the non-payment of rent for numerous months; receiving a 10 Day Notice; and because I find it is unlikely the landlord will be able to re-rent the unit starting July 16, 2013 with such short notice.

I accept the agreement reached by the parties that the tenant's security deposit shall be used to offset a portion of the rent owed to the landlord. Therefore, I authorize the landlord to retain the security deposit.

I make no award for plumbing costs or a rent reduction based upon the mutual waiver of these respective claims. Accordingly, these portions of the Applications before me are dismissed.

I award the landlord the filing fee he paid for this Application.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: up to and including June 2013	\$ 1,800.00
Loss of Rent: July 2013	950.00
Filing fee	50.00
Less: security deposit	<u>(475.00)</u>
Monetary Order for landlord	\$ 2,325.00

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective July 15, 2013. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,325.00 to serve and enforce as necessary.

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: July 11, 2013

Residential Tenancy Branch

