

Decision

Dispute Codes: MNR, MNDC, OPR, OPC, MNSD, FF

Introduction

This Application for Dispute Resolution by the landlord indicated that the landlord was seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause and based on a Ten-Day Notice to End Tenancy for Unpaid Rent. The landlord was also seeking a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord testified that both the Ten-Day Notice and the One-Month Notice were dated July 31, 2008 and were served in person to the tenant on the same date. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail that Canada Post records confirm was signed for by the tenant on August 23, 2008, the Tenant did not appear.

The landlord submitted a copy of the One-Month Notice to End Tenancy for Cause dated July 31, 2008 and effective August 31, 2008.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and a monetary order claiming \$1,790.00.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled under the *Residential Tenancy Act*, (the *Act*), to an Order of Possession under *section 55* of the *Act* based on either of the two notices to End Tenancy.
- Whether the landlord is entitled to monetary compensation under *section 67* of the *Act* for rental arrears owed, damages or loss of rent. This determination is dependant upon answers to the following questions:

- Has the landlord submitted proof that the specific amount of rent being claimed is validly owed by this tenant?
- Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

Background and Evidence

The landlord had submitted into late evidence a copy of the One-Month Notice to End Tenancy for Cause dated July 31, 2008 showing an effective date August 31, 2008 indicating that the tenant has significantly interfered with or unreasonably disturbed another applicant or the landlord and that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that the tenant's conduct has caused repeated disturbances that have required police attendance and have bothered other residents including the landlord. On this basis, the landlord issued the One-Month Notice and feels that an Order of Possession is warranted.

No evidence was submitted to support or verify the landlord's allegations about the disruptive, dangerous or illegal conduct of the tenants.

The landlord did not submit a copy of the 10-Day Notice to End Tenancy that the landlord had testified was apparently issued and served on July 31, 2008. The landlord did not submit independent documentary evidence to prove that rent was in arrears nor still owing.

The Landlord also failed to submit any evidence to support the landlord's claim shown on the application requesting money owed or compensation or damage under the Act, regulation or tenancy agreement.

Analysis

Order of Possession

Based on the testimony of the landlord, and despite the fact that I find that the landlord did not provide sufficient evidence to support that the conduct of this tenant would warrant the ending of the tenancy under the categories cited in the Notice, I find that an Order of Possession still must be issued in favour of the landlord. The reason for this determination is because the tenant was served with a One-Month Notice to End Tenancy for Cause and did not made application to dispute the Notice, therefore, under section 47(5) of the Act the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession under the *Act*.

Monetary Order

In regards to the portion of the landlord's application regarding the rent owed, I find that this can not be supported. A monetary claim for rent is based on the Ten-Day Notice to End Tenancy, and I find that the landlord did not submit a copy of this document, nor serve it as evidence on the other party prior to the hearing.

In regards to the portion of the landlord's application relating to the monetary claim for money owed or compensation or damage under the Act, regulation or tenancy agreement, I find that the absence of evidence renders this part of the claim unsupportable.

Therefore, because the landlord has not met the burden of proof to justify compensation from the tenant, all of the monetary claims in the landlord's application, shown to be \$1,790.00, must be dismissed.

Conclusion

Based on the above facts I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This order must be

served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is not entitled to be reimbursed for the \$50.00 fee paid by the landlord for this application.

September 11, 2008
