



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, FF.

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for unpaid rent, pursuant to Section 67;
- An order of possession pursuant to Section 55;
- An order to recover the cost of filing this application pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on or about July 01, 2004. The current rent is \$1263.97 and is payable in advance on the first day of the month. On August 12, 2008, the tenant was advised of a rent increase effective December 01, 2008. The tenant paid rent late in September and November and failed to pay rent in December. The landlord served a ten day notice to end tenancy dated December 02, 2008 with an effective date of December 16, 2008. The tenant continues to occupy the rental unit and has not paid rent for December 2008 or January 2009.

The landlord stated that the tenant was late paying rent several times and has provided evidence to support this. The landlord also stated that the notice of hearing was sent by registered mail to the tenant and provided me with the tracking number. I am satisfied that the tenant was properly served even though the tenant stated that he was not served the landlord's evidence package and only found out about the hearing from the office manager. The landlord has applied for an order of possession and a monetary order in the amount of \$2627.94 which consists of rent for December and January, \$50.00 in NSF charges and \$50.00 for the filing fee.

The tenant stated that an attempt was made to pay by debit card on December 19, 2008 and due to problems with the card reader and the connection, the payment did not go through. The tenant stated that he needed to leave in a hurry to board a ferry, hence he did not return to complete the transaction. The tenant also stated that the tenant had additional evidence by way of a letter from the rental office which stated that the notice would be void if the tenant paid rent in full by December 19, 2008. The tenant requested that the hearing be adjourned in order to use this letter as evidence. This letter has been submitted into evidence by the landlord and I find that this letter will not contribute to the notice being set aside as the tenant failed to pay rent on December 19, 2008.

Analysis

Based on the sworn testimony of the landlord and tenant, I accept the landlord's evidence in respect of the claim. 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 did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. The landlord offered to set aside the notice if the tenant paid December rent by December 19, 2008 and the tenant attempted to do so but did not follow up on a failed transaction.

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 is entitled to rent for December and January for a total of \$2527.94. I also find that the landlord is entitled to the recovery of \$50.00 in NSF fees and the filing fee in the amount of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$2627.94. 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 and a monetary order in the amount of **\$2627.94.**

Dated January 14, 2009.

Dispute Resolution Officer