

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated November 25, 2008, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the tenant both appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord was seeking an Order of Possession. The landlord was also seeking a monetary order claiming unpaid rent and late-payment fees totaling \$2,802.00.

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

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated November 25, 2008 with effective date of

December 5, 2008, and testified that the tenant failed to pay rent of \$885 for the months of November 2008, December 2008 and January 2009.

The landlord testified that the amount being sought included rental arrears as well as late fees owed. The landlord was also seeking to end the tenancy under section 46 for unpaid rent and asked for an order of possession.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act 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.

I find that the landlord is entitled to receive compensation for rental arrears owed by the tenant. In regards to the late fees, the Act only permits a maximum of \$25.00 for late payment provided that this is contained as a term in the tenancy agreement. I find that, as the landlord did not submit a copy of the tenancy agreement into evidence, the portion of the claim relating to late fees must be dismissed.

However, I find that the landlord has established a total monetary claim for rent owed in the amount of \$2,750.00 comprised of \$885.00 rental arrears for the month of November 2008, \$885.00 rental arrears for the month of December 2008, \$885.00 rental arrears for the month of January 2009 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$444.17 in partial satisfaction of the claim leaving a balance due of \$2,260.83.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective January 14, 2008. 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 grant the Landlord an order under section 67 for \$2,260.83. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

January 2009

Date of Decision

Dispute Resolution Officer