



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR MNSD OPR 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 January 2, 2009, a monetary order for rent owed and for compensation for loss or damage under the Act and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant appeared, and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$520.00 arrears for the month of January 2009 and \$820.00 possible loss of rent for the month of February 2009.

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

Whether or not the landlord is entitled to other compensation for damage or loss under the Act

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated January 2, 2009 with effective date of January 13, 2009, a copy

of the tenancy agreement and a copy of a communication from the tenant dated January 1, 2009, giving notice to move . The landlord testified that the tenancy began on September 1, 2008, at which time the tenant paid a security deposit of \$420.00 The landlord's application indicated that the tenant failed to pay rent and went into arrears of \$520.00 for the month of January 2009. The landlord testified that loss of rent was claimed just in case the unit could not be rented for February 1, 2009. The landlord is seeking an order of possession in addition to the monetary order.

The tenant testified that he fell into arrears when his room mate left and the landlord did not consent to a new room mate. The tenant could not pay the arrears for January 2009 within the 5-days of receiving the notice.

The landlord stated that changing co-tenants would require that another tenancy agreement be created with a proper application and screening which would not be possible in time to avoid acting on the notice to terminate this tenancy.

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 in full 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 money still owed by the tenant and I find that the landlord has established a total monetary claim of \$570.00 comprised of \$520.00 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 \$422.10 in partial satisfaction of the claim leaving a balance due of \$147.90. I make no findings regarding the issue of loss of rent for the month of February 2009 and the landlord is at liberty to make a subsequent application in the event that the landlord suffers a loss of rent despite proven efforts mitigate.

Conclusion

I hereby issue an Order of Possession in favour of the landlord 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 grant the Landlord an order under section 67 for \$147.90. 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.

Dated: January 2009