



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR MNSD OPC OPR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated December 17, 2008, an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated November 10, 2008 and effective December 31, 2008, a monetary order for rental arrears and an order to retain the security deposit in partial satisfaction of the claim. Both the Landlord and the tenant appeared. A witness for the landlord also appeared

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 \$850.00 each month for December 2008 and January 2009 owed by the tenant.

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 dated December 17, 2008, or the One-Month Notice to End Tenancy for Cause dated November 10 2008.

Whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord submitted into evidence a copy of the tenancy agreement, as well as two copies of the 10-Day Notice to End Tenancy dated December 17, 2008, one featuring an effective date of December 27, 2008 and the other with an effective date shown as December 2008. The landlord testified that the tenant's cheque for rent for the month of December 2008 was returned "NSF" and had submitted into evidence a copy of the cheque with a bank stamp proving that it failed to clear. The landlord also included a copy of bank statements showing that a cheque for \$850.00 was returned on October 14, 2008 and a cheque for \$850.00 was returned on December 11, 2008. The landlord testified that the Ten-Day Notice was issued and was served to the tenant by the landlord's real estate agent on December 17, 2008. The landlord testified that the tenant did not subsequently pay the rent owed for December, nor did the tenant pay rent for the month of January 2009. The landlord also testified that a One-Month Notice for Cause was issued on November 10, 2008 and was served on the tenant.

A witness for the landlord testified that the Ten-Day Notice to End Tenancy for Unpaid Rent had been served on the tenant on December 17, 2008 by giving the document to the Tenant in person and also by posting the Notice. The witness testified that he had also served the One-Month Notice to the tenant.

The tenant acknowledged that the rent for January 2009 was not paid. However, the tenant disputed the landlord's testimony that the rent for the month of December had not been paid. The tenant testified that the cheque had not cleared because the tenant had already paid rent for December 2008 in cash on November 30, 2008. The tenant confirmed that although he had received both the Ten-Day Notice and the One-Month Notice, the tenant did not file an application for dispute resolution to dispute either of these notices.

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. .

I find that the landlord would have otherwise have been entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated November 10, 2008 and effective December 31, 2008 because, pursuant to section 47(5) of the Act if the tenant fails to make an application to dispute the One-Month Notice of Cause, 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.

I find that the landlord is entitled to compensation for rental arrears of \$850.00 for the month of December 2008. In regards to compensation for rent owed for the month of January 2009, I note that section 7(2) of the Act requires a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement to do whatever is reasonable to minimize the damage or loss. Accordingly, I grant the landlord \$425.00 representing a half-month's rent for January 2009, to give the landlord an opportunity to try to re-rent the unit. I find that the landlord still has leave to pursue a damage claim for any further loss of rent or other claims of damage or loss, should this be necessary after the tenancy ends.

Accordingly, I find that the landlord has established a total monetary claim of \$1,325.00 comprised of \$850.00 rental arrears for the month of December 2008, \$425.00 partial rent owed 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 \$426.06 in partial satisfaction of the claim leaving a balance due of \$898.94.

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 \$898.94. 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