

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

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 December 2, 2008, a monetary order for rent owed and to recover the filing fee for the cost of this Application.

All of the information in the case file was reviewed and the hearing for this Application proceeded on its merits.

Issue(s) to be Decided

The Landlord is seeking an Order of Possession. The Landlord is also seeking a monetary order claiming \$1,995.00 plus recovery of the \$50.00 filing fee.

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; and

Whether or not the Landlord is entitled to monetary compensation for rental arrears owed under the tenancy agreement.

Background and Evidence

The Landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated December 2, 2008 with effective date of December 12, 2008. The Landlord testified as follows:

- Rent for the unit was \$825.00 per month. There was an additional charge of \$25.00 per month for parking.
- Rent was due on the 1st of the month. The Tenant failed to pay rent and parking for December, 2008, and January, 2009.
- The Landlord served the Tenant personally with the Notice to End Tenancy on December 2, 2008.

The Tenant testified as follows:

- Rent for the unit was \$825.00 per month.
- The Tenant did not pay rent for the months of December, 2008 and January, 2009, because there was no Landlord on site and the unit had mold.
- The Tenant was not served personally, but found the Notice to End Tenancy slipped under the door to the rental unit. The Tenant could not remember the date the Notice to End Tenancy was left under the door.

The Tenant and Landlord agree as follows:

- There was a security deposit paid on August 14, 2008, in the amount of \$400.00.
- The tenancy began on August 14, 2008.
- There was a written Tenancy Agreement.

Analysis

Based on the testimony of the Landlord and Tenant, I find that the Tenant was served with a Notice to End Tenancy for Unpaid Rent. Section 88 (g) allows for service of a Notice to End Tenancy “by attaching a copy to a door or other conspicuous place at the address at which the person resides”. Service in this manner is deemed to be effective on the 3rd day after it is served. 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 tenancy ended on December 15, 2008, which is 10 days after the Notice to End Tenancy was deemed to be served. Based on the above facts I find that the Landlord is entitled to an immediate Order of Possession.

In the Application for Dispute Resolution, the Landlord requested a monetary order in the amount of \$1,995.00 for December, 2008 and January, 2009 rent “along with other cleaning and updated costs.”

The Tenant says that the rent was \$825.00 per month. The Landlord’s verbal submission was that the monthly rent was \$825.00 per month plus a \$25.00 monthly parking fee. In the Application for Dispute Resolution, the Landlord claims the rent is \$875.00 per month, which includes a \$25.00 per month parking fee. If I were to accept the Landlord’s verbal testimony, the total monthly rent is \$850.00, not \$875.00.

The Tenants dispute the amount of rent as stated in the Application for Dispute Resolution. A copy of the Tenancy Agreement was not submitted into evidence by the Landlord. Therefore, the Landlord has not substantiated his claim for \$875.00 per month, and I find that the rent for the unit was \$825.00 per month.

The Landlord has not proven his claim with respect to “other cleaning and updated costs”. He did not submit any evidence outlining a breakdown of these “costs” and I dismiss this portion of his application.

The Tenant submitted that he did not pay the rent for December and January because of mold in the rental unit. The Tenant did not file an Application for Dispute Resolution with respect to a claim for damages arising from mold in the unit. Section 26(1) of the Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has right under this Act to deduct all or a portion of the rent.

I find that the Landlord has established a total monetary claim of \$1,700.00 comprised of rent arrears totalling \$1,650.00 and the \$50.00 fee paid by the Landlord for this application. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord retain the security deposit of \$400.00 plus interest of \$2.30, for a total of \$402.30 in partial satisfaction of the claim leaving a balance due of \$1,297.70.

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

I hereby grant the Landlord a monetary order under Section 67 of the Act for \$1,297.70. This order must be served on the Tenant/Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

January 5, 2009
