



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 February 11, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and each gave 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 \$835.00 still outstanding plus the \$50.00 fee for filing.

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 or was the tenancy reinstated.

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 10-Day Notice to End Tenancy dated February 11, 2009 with effective date of February 21, 2009, which was posted on the door, a copy of the resident ledger, and a copy of the tenancy agreement, a copy of a second 10-day Notice dated March 4, 2009. The evidence shows that the tenancy began on March 1, 2008, at which time the tenant paid a security deposit of \$417.50. The landlord testified that the tenant failed to pay rent for the month of February properly due on February 1, 2009 and was issued a Notice to End Tenancy. The landlord testified that the tenant subsequently paid \$835.00 on March 17, 2009, but remained in arrears for \$835.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession and a monetary order.

The tenant testified that he had entered into a payment plan with the landlord who told him to disregard the notice and the tenant perceived that the tenancy was reinstated.. The tenant acknowledged that he was still in arrears for \$835.00 agreeing that he had not brought his account up to date and that this could not be done immediately and he was not sure when this could be done

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. When a tenant does not pay the outstanding rent or make an application to dispute the Notice within 5 days, the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The landlord, under normal circumstances, would be entitled to an Order of Possession. However, the issue of whether or not the tenancy was reinstated by the landlord by accepting partial payment without making it clear that the payment was “for use and occupation only”, could affect this determination. That

being said, even if I found that the tenancy had actually been re-instated, the tenancy could still be ended because, due to the tenant's failure to pay all of the rent owed for March, the landlord could simply make another application based on the second 10-Day Notice dated March 4, 2009 to end the tenancy.

A mediated discussion ensued and the parties agreed to allow the tenant to remain in the unit until March 31, 2009, at which time the tenancy will end. The tenant agreed to cooperate by allowing the landlord to show the unit to try and re-rent it to a new tenant for April 1, 2009. Accordingly, by consent of the parties, I grant an order of possession in favour of the landlord effective March 31, 2009.

AI find that the landlord has established a total monetary claim of \$885.00 comprised of \$835.00 rental arrears for the month of March 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 \$422.74 in partial satisfaction of the claim leaving a balance due of \$462.26.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective March 31, 2009. 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 hereby grant the Landlord an order under section 67 for \$462.26. 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.

March 2009

Date of Decision

Dispute Resolution Officer