



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

OPB

CNR

RR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the tenant's failure to comply with a previous order dated December 12, 2008 in regards to a payment plan to pay \$3,620.00 arrears owed at that time. The landlord was also seeking a monetary order for further arrears that have accrued since the original order. This hearing also dealt with an application by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent issued on March 1, 2009 and an Order that the landlord be required to do repairs to the unit.

Both parties appeared and each gave testimony.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order. The issues to be determined for the landlord's application, based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the tenant's failure to comply with the decision and order dated December 12, 2008

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

The issues to be determined for the tenant's application, based on the testimony and the evidence are:

Whether or not the Ten-Day Notice to End Tenancy for Unpaid Rent dated March 1, 2009 should be cancelled.

Whether or not the landlord should be ordered to complete repairs on the unit to comply with section 32 of the Act.

The burden of proof is on the landlord to establish that the tenant did not comply with the previous order and to verify that the amounts being claimed are genuinely owed.

The burden of proof is on the tenant to prove that the Ten-Day Notice to End Tenancy dated March 1, 2009 is not valid and that the landlord has failed to comply with the Act and do necessary repairs to the unit

Background and Evidence

The landlord testified that the tenant did not comply with an order issued on December 12, 2008 that contained a payment plan to enable the tenant to catch up on the rental arrears owed to the landlord at that time which totaled \$3,620.00 as of that date. The landlord testified that the tenant paid \$105 in December, 2008, \$1,105.00 in January, 2009 and another \$1,000.00 in February 2009, reducing the arrears by \$2,210 and leaving a balance of \$1,410.00 still owed. The landlord testified that the tenant also failed to pay rent owed for this period. The landlord is claiming \$1,410 for the remaining arrears as well as unpaid rent of \$895.00 owed for each month including February 2009, March 2009 and April

2009. The total claim is \$5,030.00 and the landlord is seeking a monetary order against the tenant for this amount. The landlord is also seeking an order of possession based on the tenant's breach of the order to pay.

The tenant acknowledged that the arrears were not paid according to the schedule and that the tenant still owed money to the landlord at the time that the Ten-Day Notice was issued on March 1, 2009. The Tenant explained that the tenant's personal circumstances affected his ability to pay rent and to adhere to the payment schedule ordered on December 12, 2008. The tenant testified that repairs to the unit were needed and that the landlord should be ordered to complete these repairs.

Analysis

Based on the testimony of both parties, I find that the tenant defaulted on the payment plan ordered on December 12, 2008 and only managed to make partial payments of the arrears and nothing towards rent owed for the months of February, March and April 2009. I find that the landlord is entitled to monetary compensation in the amount of \$5,080.00 comprised on \$1,410.00 outstanding arrears, \$895.00 rent owed for the month of February 2009, \$895.00 rent owed for the month of March 2009, \$895 rent owed for the month of April 2009 and the \$50.00 paid to file this application. . I order that the landlord retain the security deposit and interest of \$465.91 in partial satisfaction of the claim leaving a balance due of \$4,614.09.

In regards to the tenant's application to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent dated March 1, 2009, I find that, based on the tenant's own testimony, the Ten-Day Notice was validly issued in that the tenant owed the landlord rental arrears on the date the Notice was issued and did not pay the arrears within five days of receiving the notice. Therefore the provisions of the Act do not permit me to cancel the Notice and I dismiss the tenant's application relating to the request to cancel the Notice.

In regards to the portion of the tenant's application relating to the request for repairs, I find that because the tenancy is ending, pursuant to the Ten-Day Notice, the issue of repairs is moot. Accordingly this portion of the tenant's application is also dismissed.

During the hearing the Landlord made a request for an immediate order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

Conclusion

I hereby order that the cancel the previous Order dated December 12, 2008 is permanently cancelled and of no force nor effect. I order that this December 12, 2008 order be replaced by a new monetary order granted in favour of the Landlord under section 67 for \$4,614.09. 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.

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.

The tenant's application is dismissed in its entirety without leave to reapply.

April 2009

Date of Decision

Dispute Resolution Officer