



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 April 16, 2008, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both the tenant and the landlord appeared and each gave testimony in turn.

Issue(s) to be Decided

The landlord was seeking an Order of Possession and a monetary order for unpaid pad rental fees of \$410.00 and late fees of \$25.00 for the month of April 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.

Whether the landlord is entitled to monetary compensation for a late fee.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated April 16, 2009 with effective date of April 26, 2009. The landlord and tenant testified that the tenancy began on March 1, 2009. The landlord testified that the tenant failed to pay \$410.00 rent for the month of April and a Ten-Day Notice was issued on April 16, 2009 and served personally on the tenant. The landlord testified that the tenant did pay the arrears on April 23, 2009, but this was beyond the five-day deadline permitted under the Act and a receipt was issued, "*for use and occupancy only*". The landlord testified that the tenant was also charged \$25.00 as a late fee and that there was no written tenancy agreement. The landlord testified that the tenant has not moved and the landlord requested an Order of Possession.

The tenant testified that, although he failed to pay the rent when it was due, he did pay it as soon as possible. The tenant testified that, although the payment was made more than 5 days after receipt of the Ten-Day Notice issued on April 16, 2009, he was under the impression that the landlord would then not proceed with the eviction. The tenant testified that he did not understand what, "*for use and occupancy only*", written on the receipt, actually meant and was surprised when the landlord served the Notice of Dispute Resolution Hearing actively pursuing an end to the tenancy. The tenant was also upset that the landlord had illegally cut off the hydro to his unit for several days. The tenant acknowledged that he did not pay rent for the month of May 2009.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person on April 16, 2009. The tenant did not pay the outstanding rent within five days of receiving the Ten-Day Notice to end Tenancy and did not apply to dispute the Notice and is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The tenant's payment of the

outstanding arrears for April on April 23, 2009 did not serve to cancel the notice because this was done after the five-day deadline. The payment also did not serve to reinstate the tenancy because the landlord issued a receipt specifically stating that the payment was only for the tenant's use of the premises. In any case, even if the landlord had chosen to reinstate this tenancy, the fact that the tenant then failed to rent for the month of May 2009 on May 1 when it was due, would have been sufficient to justify the issuing of another Ten-Day Notice to End Tenancy.

Section 20 (1) of the Act states that 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 a right under this Act to deduct all or a portion of the rent.

The fact that the tenant's personal financial circumstances prevented him from paying the rent when it was due under the Act, does not function to exempt the tenant from complying with the Act, nor does this protect the tenant from the consequences of violating the Act. In this instance, the tenant's failure to pay the rent on time, or at least within five days of the Notice, is sufficient to support the Notice to End Tenancy for Unpaid Rent. The Act contains no provision forcing the landlord to bear the burden for the tenant's defaulting on rental payments.

Given the above, I find that the landlord is entitled to an Order of Possession based on the Ten-Day Notice .

In regards to the monetary order, I find that the landlord is not entitled to the monetary claim shown in the application. The tenant has since paid the \$410.00 rent and a \$25.00 late payment fee for the month of April in full.

In fact, I find that the landlord was not entitled under the Act to charge the \$25.00 late payment fee. While section 5(d) of the *Manufactured Home Park Tenancy Regulation* does permit a late payment fee of up to a maximum of \$25.00, the landlord can only collect this when a specific provision is contained in the tenancy agreement signed by both parties. In this instance, there was no

written tenancy agreement, despite the fact that a written agreement is required under section 13 of the Act. Therefore the landlord is not permitted to impose a late payment fee on the tenant.

Based on the above, I find that the portion of the landlord's application relating to monetary compensation for rental arrears must be dismissed. I find that the landlord is not entitled to be reimbursed for the \$50.00 fee paid for this application.

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.

The remainder of the landlord's application is dismissed without leave.

May, 2009

Date of Decision

Dispute Resolution Officer