

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 19, 2009. Mail receipt numbers were provided in the landlord's evidence. The tenant was deemed to be served the hearing documents on March 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for unpaid rent
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent and to recover the filing fee

Background and Evidence

The tenancy began as a fixed term tenancy on December 1, 2005 and is now a month to month tenancy with rent of \$1,164.00 payable on the first of each month. The tenant paid a security deposit of \$497.50 on November 7, 2005.

The landlord testified that a 10 Day Notice to End Tenancy was posted on the tenant's door on March 2, 2009 at 9:30 a.m. for unpaid rent in the amount of \$1,453.00.

The landlord testified that the tenant currently owes April rent of \$367.00 plus May rent of \$1,164.00 and a \$25.00 late payment fee for both April and May for a total arrears of \$1,581.00. The landlord stated that the tenant made a payment towards the rental arrears, on May 1, 2009, at which time a receipt was issued to the tenant for "use and occupancy only."

The landlord stated that the tenant and landlord have entered into a written letter of agreement, signed by both parties, which stipulates that the tenant will pay the full rental arrears of \$1,581.00 no later than May 15, 2009, and in doing so will reinstate the tenancy.

The tenant testified and confirmed that he has signed the above mentioned agreement.

The landlord is requesting an Order of Possession effective May 15, 2009, to be served on the tenant if he fails to pay the rental arrears in full, as per their agreement.

The tenant testified that he understood that if he failed to pay the rental arrears by May 15, 2009 then the landlord could serve the Order of Possession on him, requiring him to vacate the rental unit.

The landlord has withdrawn their request for a Monetary Order for unpaid rent and has withdrawn their request to recover the filing fee.

Analysis

Order of Possession - I find that 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 10 Day Notice, as he failed to pay the rent in full within 5 days and did not apply to dispute the notice. The landlord accepted partial payment and issued a receipt for use and occupancy preventing the reinstatement of the tenancy. Based on the foregoing, I find in favor of the landlord's request for an Order of Possession.

The landlord has withdrawn their request for a Monetary Order and has withdrawn their request to recover the filing fee.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **May 15, 2009**. The Order of Possession is included in the Landlord's decision and must be served on the Respondent in the event that the tenant fails to pay the rental arrears in full by May 15, 2009. The Order may be filed in the Supreme Court and enforced as an order of that Court.

If the tenant upholds his agreement to pay the rental arrears in full by May 15, 2009, then the Order of Possession becomes cancelled, is of no force or effect, and the tenancy is reinstated.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 04, 2009.

Dispute Resolution Officer