



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR

OPL

MNR

FF

Introduction.

This was a rehearing of proceedings initially heard on April 22, 2009 during which the tenant did not appear. In a review decision dated May 5, 2009, on the tenant's application a rehearing was allowed. The hearing now before me is on two applications by the landlord: one for an Order of Possession based on a Two-Month Notice to End Tenancy for Landlord Use, and; the other application for an Order of Possession and monetary order for rent owed, based on a Ten-Day Notice to End Tenancy for Unpaid Rent.

There have been several previous hearings between these two parties. On February 19 and March 6, 2009 there was a hearing on the tenant's application under file #00 and in the decision dated March 10, 2009, later corrected on April 1, 2009, it was found that the condition of the unit had seriously deteriorated due to the problem of mould growth which was found to be solely the responsibility of the landlord. In the corrected decision, the tenant had been awarded a lump sum of \$2,062.50, representing a past rent abatement for devaluation of the tenancy and a future rent reduction to continue until the landlord repaired the unit. An Order was also issued against the landlord ordering the landlord to repair the unit to make it fit for human habitation.

Evidently, the landlord then made an application for a monetary order under file #0000 for compensation for damage to the suite allegedly caused by the tenant, that was heard in the tenant's absence on June 4, 2009 and the landlord was successful in being granted a monetary order. However, this decision is currently under review.

Issue(s) to be Decided

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 Two-Month Notice for Landlord's Use dated January 7, 2009.
- Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent dated February 20, 2009.
- Whether or not the landlord is entitled to monetary compensation for rental arrears owed

The burden of proof is on the applicant landlord to prove that the notices are valid.

Background and Evidence

This tenancy began in 1997. Submitted into evidence by was a copy of the Ten-Day Notice to End Tenancy dated February 20, 2009, a copy of the Two-Month Notice to End Tenancy for Landlord Use, a copy of the tenancy agreement signed on August 1997 and written testimony from the landlord and the tenant.

The tenant did not file an application to dispute either the Ten Day Notice for Unpaid Rent nor the Two-Month Notice for Landlord's Use.

The landlord testified that the tenant had not paid rent owed and a Ten-Day Notice was issued on February 20, 2009. The landlord testified that the tenant has not paid any rent for five months now. The landlord testified that the Two-Month Notice for Landlord Use was issued because the landlord intends to move into the suite.

The tenant testified that the Two-Month Notice issued on January 7, 2009 was not signed and a photocopy was re-served by the landlord still dated January 7, 2009 on February 19, 2009 and again on April 6, 2009.

The tenant testified that, in regards to the Ten-Day Notice, the rental arrears being alleged are not owed. The tenant testified that in March 2009 he was granted a monetary order for \$2,062.50 and had served this monetary order on the landlord, however, the landlord refused to pay the monetary award. The tenant testified that in the March 10, 2008 decision, the

tenant's monthly rent was ordered to be reduced to \$400.00 because of the state of the premises, pending the landlord's compliance with the Act by repairing the unit and bringing it up to livable condition. The tenant testified that, because the landlord had made it clear that it would never pay the monetary order nor doing any repairs, the tenant determined that the landlord's debt could be recouped by setting off the rent owed each month.

The tenant testified that, after the tenant served the Order issued on March 10, 2009 , requiring that the landlord repair the rental unit, the landlord refused to take any action to make the ordered repairs and then engaged in reprisal actions against the tenant, even calling the police with false reports about the tenant.

The landlord stated that it had no intention of honouring the previous monetary order that was issued in favour of the tenant on April 1, 2009, served on the landlord by the tenant shortly thereafter. The landlord was not conciliatory in any respect and suggested that the tenant go to court if the tenant was intent on enforcing this order. In fact, the landlord freely admitted that, while it was seeking to enforce the Act through this dispute process in the application before me, the landlord had chosen to willfully disregard orders previously issued by the same legal authority.

The landlord stated that, in fact, the landlord had since made a subsequent application for damages against the tenant that was heard on June 4, 2009 in the absence of the tenant and that the landlord was successful in being granted a monetary award exceeding the award previously granted to the tenant on April 1, 2009. The landlord stated that the compensation was based on damage to the unit allegedly caused by the tenant.

The tenant testified that the tenant was never served and was never told about the June 4, 2009 hearing on the landlord's application.

Analysis

Ten-Day Notice

Based on the evidence and the testimony of both parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant's position that rent was technically not in arrears due to the unpaid monetary order against the landlord, may have seemed logical to the tenant but was not supported in law. The tenant did not dispute the notice and under section 46(5) unless the tenant pays or disputes the notice, the tenant is conclusively presumed to have accepted that the tenancy will end. That being said, I find

that the outstanding monetary order \$2,062.50 would affect the amount of the landlord's claim for rental arrears. I find that a calculation must be made setting off the debt of the landlord to the tenant with the debt of the tenant to the landlord.

Two-Month Notice

In regards to the Two-Month Notice for Landlord's Use purportedly dated January 6, 2009, I find that there is some discrepancy regarding the date that the notice was served. Section 49.1(3) of the Act states that a landlord can end a tenancy for landlord's use on a date that is not earlier than 2 months after the date the notice is received, and falls on the day before the day in the month that rent is due. I find that, section 51 (1) of the Act states that tenant who receives a notice to end a tenancy under section 49, [landlord's use of property], is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent to one month's rent payable under the tenancy agreement. I find that the fact that the tenancy may have end for other valid reasons, does not serve to extinguish the tenant's entitlement to be credited with the equivalent of one month rent in compensation under section 51 of the Act

Monetary Claim

In regards to the monetary claim of the landlord, I find that both parties agreed that the tenant had not paid rent for the months of February, March, April, May and June 2009 in the amount of \$400.00 per month for a total rental bill of \$2,000.00 owed to the landlord covering occupancy to June 30, 2009. In regards to the outstanding monies still owed by the landlord to the tenant, I find that the tenant is entitled to \$2,062.50 plus the equivalent of one month rent of \$400.00 under section 51(1) for a total debt of \$2,462.50.

Agreement between parties

A mediated discussion ensued and the parties agreed that the tenant would vacate the unit at 1:00 p.m. on June 29th and that immediately prior to the tenant leaving and surrendering the keys, the landlord would give the tenant the remaining \$462.50 owed in cash or certified cheque in front of a witness and would, in exchange, receive a signature from the tenant expressly waiving any future enforcement of the previous \$2,062.50 monetary order issued on April 1, 2009 and stating that the monetary order for \$2,062.50 was satisfied in full.

However, should the landlord fail to give the tenant \$462.50 in cash or certified cheque at the time that the tenant finally vacates on June 29, 2009, and therefore not receive a signature

from the tenant expressly waiving any future enforcement of the April 1, 2009 monetary order for \$2,062.50, then the monetary order for \$2,062.50 issued on April 1, 2009 will still validly remain in full effect in its entirety and can justifiably be enforced by the tenant, against the landlord through Small Claims Court.

Conclusion

I hereby grant an Order of Possession to the Landlord, effective June 30, 2009.

I hereby order the tenant, immediately upon receipt of \$462.50 from the landlord in cash or certified cheque in front of a witness, on June 29, 2009 at or around 1:00 p.m. to furnish the landlord with a signed waiver expressly waiving any future enforcement of the previous \$2,062.50 monetary order that was issued on April 1, 2009 and stating that this monetary claim and order against the landlord has been satisfied in full.

Should the landlord fail to give the tenant \$462.50 in cash or certified cheque at the time that the tenant permanently vacates on June 29, 2009, I hereby order that the tenant is completely at liberty to proceed in pursuing enforcement of the \$2,062.50 monetary order issued on April 1, 2009, through the Provincial Court (Small Claims) and enforced as an order of that Court.

June 2009

Date of Decision

Dispute Resolution Officer