



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

MNR

OPR

CNR

CNC

FF

#### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Ten-Day Notice to end Tenancy dated June 2, 2009. The landlord was also seeking a monetary order for rental arrears in the amount of \$1,200.00. This hearing also dealt with an application by the tenant to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2009 and an Order to cancel a One-Month Notice to End Tenancy for Cause dated June 2, 2009

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 Ten-Day Notice

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 June 2, 2009 should be cancelled.

Whether or not the One Month Notice to End Tenancy for Cause dated June 2, 2009 should be cancelled.

The burden of proof is on the landlord to establish that the Ten-Day Notice or the One-Month Notice was justified 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 June 2, 2009 and the One-Month Notice to End Tenancy for Cause were not supported under the Act and should be cancelled on that basis

### **Background and Evidence**

The landlord testified that the tenancy began on May 1, 2009 and that rent was set at \$1,200.00 plus parking. A security deposit of \$600.00 was paid by the tenant. The landlord testified that tenant did not pay rent owed on June 1, 2009 in the amount of \$1,200.00 and that a Ten-Day Notice was issued and served to the tenant on June 2, 2009. The landlord testified that the tenant still did not pay the outstanding rent within the five days allowed under the Act to cancel the Notice and in fact did not pay the arrears at any time since. The landlord is seeking an order of possession effective June 30, 2009 and a monetary order for the rental arrears owed.

The tenant testified that she had approached the landlord on June 1, 2009 asking whether or not the landlord had received the post-dated cheques being sent in by the tenant's sister to the landlord. The tenant testified that the landlord confirmed

that the cheques had been received. The tenant testified that later, when she received the Ten-Day Notice, she was surprised. The tenant testified that she could have given a replacement cheque from her own account to satisfy the debt, but was never told that this was necessary. The tenant was unable to explain why she did not take action to pay the rent within 5 days, as specified on the Ten-Day Notice, nor why she has not paid the outstanding rent to date. The tenant acknowledged that the arrears were not paid and that the tenant still owed money to the landlord at the time that the tenant made application for dispute resolution seeking to cancel the two notices.

The landlord disputed the tenant's allegation that the landlord had confirmed receipt of the post-dated cheques and stated that no post-dated cheques had ever been received from the tenant or her sister.

### **Analysis**

Based on the testimony of both parties, I find that the tenant defaulted on the rent properly due on June 1, 2009 and received a Ten-Day Notice to End Tenancy for Unpaid Rent on June 2, 2009. In regards to the tenant's application to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent dated June 2, 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. Accordingly I grant the landlord's application for an Order of Possession.

In regards to the validity of the One-Month Notice and the tenant's application that it be cancelled, I find that this matter is no longer a material issue, being that the tenancy is coming to an end pursuant to the Ten-Day Notice.

I find that the landlord is entitled to monetary compensation in the amount of \$1,250.00 comprised of \$1,200.00 outstanding rental arrears for June 2009 and the \$50.00 paid to file this application. . I order that the landlord retain the

security deposit and interest of \$600.00 in partial satisfaction of the claim leaving a balance due to the landlord in the amount of \$650.00.

**Conclusion**

I hereby issue a monetary order granted in favour of the Landlord under section 67 for \$650.00. 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 Tuesday June 30, 2009 at 1:00 p.m. 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.

June 2009

Date of Decision

\_\_\_\_\_

Dispute Resolution Officer