



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 June 2, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$940.00 for May 2009 and \$1,300.00 for June 2009. The application also contained a request to retain the security deposit for rental arrears and damages. The application was amended to add a claim for \$1,300.00 for July 2009 and \$1,300.00 for loss of rent for the month of August, 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 and loss of rent.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated June 2, 2009 with effective date of June 12, 2009, a copy of the resident ledger, a copy of the tenancy agreement, copies of two other 10-Day Notices to End Tenancy for Unpaid Rent dated July 9, 2009 and May 11, 2009 and copies of communications from the landlord to the tenant.

The tenancy began on November 15, 2007, at which time the tenant paid a security deposit of \$650.00. The landlord testified that the tenant failed to pay \$940.00 of the rent for the month of May, 2009, \$1,300.00 rent for the month of June , \$1,300.00 rent for the month of July 2009. The landlord also testified that a loss of rent of \$1,300.00 is anticipated for the month of August 2009, due to the fact that the landlord will not likely be able to re-rent the unit by August 1, 2009. The total amount being claimed is \$4,480.00. The landlord testified that the tenant has not paid the arrears, nor vacated the unit, and the landlord has requested an Order of Possession in addition to the monetary order.

The tenant testified that he will be vacating at the end of the month. The tenant gave testimony about various problems during the tenancy and the fact that he feels that his concerns about the state of the rental unit were not addressed by the property manager or the owner. The tenant testified that he is planning on taking legal action regarding the damages incurred due to the landlord's failure to respond to the condition problems in the unit that he had repeatedly brought to the landlord's attention.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and the tenant did not make a cross application to dispute the Notice. It is therefore conclusively presumed under section 46(5) of the Act that the tenant accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive rent for May, June and July 2009, during which the tenant has occupied the unit without paying rent in full, for a total amount of \$3,540.00 in rental arrears owed.

In regards to the landlord's claim for loss of rent of \$1,300.00 for the month of August 2009, I find that claims by the landlord for monetary compensation for loss or damage are dealt with section 7(a) of the Act which permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. I note that there is a clear violation of section 26 of the Act which states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act. However, section 7(2) of the Act also states that a landlord or tenant who claims compensation must first take whatever steps are reasonable to minimize the loss. Moreover, in addition to proving that a violation of the Act or agreement has occurred, there must be proof that a monetary loss has already occurred or is at least imminent. In any claim for damages, the burden of proof is on the claimant to establish and verify that the claimant has actually suffered the compensable loss which was caused by the respondent. I find that the landlord has not yet incurred a loss for August 2009 at this time.

A claimant is required to prove that reasonable steps were taken to minimize the amount of the damages and I find that it is premature to make a conclusive determination as to the extent of the damages or losses given that there is a

possibility that the unit may be re-rented sometime in August. Therefore, I must dismiss the portion of the landlord's claim relating to monetary compensation for the loss of rent for the month of August 2009, with leave to reapply in future, should this anticipated loss transpire, along with any further damages that may also be assessed once the tenancy has ended.

I find that the landlord has established a total monetary claim of \$3,590.00 comprised of \$940.00 rental arrears for the month of May, \$1,300.00 rental arrears for the month of June 2009 and \$1,300.00 rental arrears for the month of July and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$661.03 in partial satisfaction of the claim leaving a balance due of \$2,928.97.

In regards to the tenant's testimony about the serious deficiencies in the rental unit and the landlord's alleged failure to comply with the Act by making repairs, I find that this testimony is not material nor relevant in any way to the proceedings before me. This hearing is on the landlord's application under section 55 and 67 of the Act and is not the tenant's application. I find that section 26 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 the Act. Therefore, any testimony about the landlord's violations of the Act, even if proven, would not have any impact on the issue of whether or not the landlord's Notice for Unpaid Rent should be enforced. That being said, should the tenant decide to make a monetary claim regarding damages based on the landlord's failure during the tenancy to comply with the Act, the tenant must make his own application for dispute resolution under the applicable section of the Act.

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.

I hereby grant the Landlord an order under section 67 for \$2,928.97. 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.

July, 2009

Date of Decision

Dispute Resolution Officer