



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, an Order for loss or damage under the *Act* and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenant on June 12, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to a Monetary Order for loss of income?
- Whether the landlord is entitled to an Order of Possession?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?

Background and Evidence

This tenancy started in October 2008. This is a month to month tenancy and rent is \$1,400.00 per month due on the 1st of each month. Initially two tenants lived together at this rental unit. One tenant has since moved out.

The tenant did not pay rent for June, 2009 of \$1,400.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on June 02, 2009. This was given to the tenant in person and



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was deemed to have been served on the same day. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 12, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant made a payment on June 11 of \$600.00. This was applied to the outstanding rent arrears for June, which left an amount owing of \$800.00. The tenant did not pay rent on July 01, 2009 of \$1,400.00. The total amount of rent arrears are \$2,200.00.

The tenant testifies that he ran into monetary problems the month before and that he had an agreement with the landlords' agent to pay instalments on the rent arrears. He testifies that he was told if he paid \$600.00 then no further action would be taken.

The landlords' agent testifies that the owners of the property are not willing to accept this arrangement as the tenant has been sporadically late with his rent since December 2008.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that the landlord is entitled to recover unpaid rent for June and July 2009 in the amount of \$2,200.00. The Residential Tenancy Policy Guideline #3, Claims for Rent and Damages for Loss of Rent, states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent. When the landlords' agent filed the application he was claiming loss of rent for June and loss of revenue for July. However, as the hearing took place in July I have joined these two months under a Monetary Order for rent arrears and the landlord withdraws his claim for loss or damage under the *Act*. The total amount of outstanding rent is \$2,200.00. The landlord is also entitled to recover his filing fee for this hearing of \$50.00 pursuant to s. 72(1) of the *Act*. A Monetary Order will be issued to the landlord for **\$2,250.00**.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay

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the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, 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 Notice and grant the landlord an order of possession.

During the course of the hearing the landlord and tenant reached an agreement, with conditions, for the payment of the rent arrears. The agreement is that the tenant will pay the outstanding rent arrears as of today's date and pay the rent that is due on August 01, 2009. If this is paid as agreed upon then the landlord will not enforce the Order of Possession or the Monetary Order that will be issued today.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,250.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court in the event that the tenant does not comply with the conditions agreed on at today's hearing.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on August 02, 2009. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court in the event that the tenant does not comply with the conditions agreed on at today's hearing.

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: July 20, 2009.

Dispute Resolution Officer