



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, OPR, CNR, 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 for July 2009 and anticipated loss of rent for August 2009. This hearing also dealt with an application by the tenant to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent issued on July 2, 2009, an Order to restrict the landlord's access and an Order to compel the landlord to comply with the Act. Both parties appeared and each gave testimony.

The parties testified that the tenant had paid rent owed for July 2009 and had also paid the rent in full for August 2009. Therefore the portion of the landlord's application seeking a monetary order for rental arrears was no longer applicable.

Issue(s) to be Decided

The landlord was seeking an Order of Possession based on the Ten Day Notice. The issues to be determined for the landlord's application, based on the testimony and the evidence is whether or not the landlord is entitled to an Order of Possession based on the Ten-Day Notice.

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 July 2, 2009 should be cancelled.

Whether or not the landlord should be ordered to comply with the Act and have conditions imposed in regards to entering the unit.

The burden of proof is on the landlord to establish that the Ten-Day Notice was justified under the Act.

The burden of proof is on the tenant to prove that the Ten-Day Notice to End Tenancy dated July 2, 2009 was not supported under the Act and should be cancelled on that basis. The burden of proof is also on the tenant to provide a valid basis to order the landlord to comply with the Act and to justify imposing restrictions on the landlord's access.

Background and Evidence

The landlord testified that the tenancy began on June 1, 2006 and that a security deposit of \$437.50 was paid by the tenant. The landlord testified that tenant did not pay \$600.00 rent owed on July 1, 2009 and that a Ten-Day Notice was issued and served to the tenant on July 2, 2009. The landlord testified that the tenant failed to pay the outstanding rent within the five days allowed under the Act to cancel the Notice. Both parties testified that the rent for July was paid on July 24, 2009 and that a receipt was issued "for Use and Occupancy Only". The landlord is seeking an order of possession.

The tenant testified that the parties had agreed to change the due date for rent from the first day of the month to the 15th day of each month. The tenant's position was that he was not in arrears when the Ten-Day Notice was issued on July 2, 2009. The tenant testified that he paid the rent for July at the earliest opportunity possible due to his employment circumstances and that the arrears were paid on July 24, 2009. The tenant testified that he also paid the rent for August in full. The tenant testified that his financial problems were now resolved and that he could pay rent on the first of each month in future.

Analysis

According to section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement. The written tenancy agreement required that rent be paid on the first day of the month.

In regards to the tenant's claim that the due date for rent was changed during the tenancy by verbal consent, I find that section 14 of the Act does permit parties to amend a tenancy agreement to add, remove or change a term, other than a standard term. However, a change would be recognized only if both the landlord and tenant agreed in writing to the amendment and signed it. In this instance, the landlord disputed that the landlord had ever agreed to a permanent change in the tenancy agreement to make rent due on the 15th of each month. The landlord had acknowledged that the tenant was granted permission to pay rent by mid month back in November 2008, but that this was not intended to be a permanent change to continue from that time on.

I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In this instance, the tenancy agreement stated that the rent was due on the first day of the month, which was a clear term. However, the verbal "agreement" that purportedly changed the due date for rent is not clear by virtue of the fact that it is being disputed by one of the parties.

For this reason, I find that the tenant has not succeeded in meeting the burden of proof to establish that rent for July was not due until July 15, 2009.

In any case, according to the tenant's own testimony, the rent was not paid by July 15, 2009 and I find that even if the mid-month payment term existed, the tenant would still have been in default as of July 16, 2009. Therefore, had a Ten-Day Notice been issued on that date, the tenant would have been required to pay all arrears within five days, by July 21, 2009, in order to cancel the Notice.

Based on the testimony of both parties, I find that the tenant failed to pay rent properly due on July 1, 2009 and was served with a valid and enforceable Ten-

Day Notice to End Tenancy for Unpaid Rent on July 2, 2009. I find 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 must 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 remainder of the tenant's application including a request for an order to compel the landlord to comply with the Act and to impose conditions on the landlord's access exceeding those already applicable under the Act, I find that these two matters have been rendered moot by the ending of the tenancy and therefore must be dismissed.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective Tuesday September 1, 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.

I find that the landlord is not entitled to be reimbursed the cost of filing the application.

The tenant's application is dismissed in its entirety without leave to reapply.

August 2009

Date of Decision

Dispute Resolution Officer