



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, OPC, MNR, MNDC, CNR, MT, RP, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55 based on the Ten-Day Notice to End Tenancy for Unpaid Rent;
- An order of possession pursuant to Section 55 based on the One-Month Notice to End Tenancy for Cause;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of his filing fee, pursuant to Section 72.

The tenant applied for the following:

- To be Allowed more time to make an application to cancel the notice
- An order to cancel the Ten-Day Notice to End Tenancy for rent, pursuant to Section 46;
- An order to compel the Landlord to make repairs

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Preliminary Issue

Names of Applicant/Respondent

The tenant's application indicated that the Applicant co-tenants named were "IB" and "EC". However, the landlord's application named the respondent tenants as "LC" and "EC". The tenant testified that IB and LC, in fact, the same individual. I accept this testimony.

Expiry of Deadline to Dispute Ten-Day Notice

The application by the tenant was submitted on July 31, 2009 to dispute a Ten-Day Notice dated June 19, 2009 and effective June 29, 2009, which was served by registered mail sent on June 19, 2009. The applicant provided a receipt to confirm service by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served in 5 days when sent by registered mail. Therefore the date the tenant was served was deemed to be June 24, 2009 and the effective date of the Ten-Day Notice is amended to be July 4, 2009 as the date the tenancy would end.

Under section 46, once a notice is received, the tenant had five days in which to file to dispute the Ten-Day Notice, or to pay the rent. This deadline expired on June 29, 2009. However, the tenant has applied for an extension beyond the five days asking to be permitted to file for dispute resolution.

Section 66 (1) of the Act states that a Dispute Resolution Officer may extend a time limit established by this Act only in exceptional circumstances. The tenant gave testimony describing his exceptional circumstances, including the isolation and distance from services, transportation issues and lack of representation to assist the tenant in disputing the Notice.

However, section 66(3) of the Act states that a Dispute Resolution Officer can not extend the time limit to make an application for disputing a Notice beyond the effective date of the notice.

In this instance, the Ten-Day Notice was effective on July 4, 2009 and the tenant made an application on July 31, 2009 to dispute it.

I find that under the Act, I do not have the authority nor the discretion to extend the deadline for filing beyond July 4, 2009 and therefore I can not grant the tenant's request

to consider his application for dispute resolution that was filed on July 31, 2009. I find that the tenant's application must be dismissed.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated July 19, 2009? In order to answer this question it must be determined:
 - Was a valid 10-Day notice to End Tenancy properly served on the tenant?
 - Did the tenant fail to pay the rental arrears within 5 days of receiving the Notice to End Tenancy?
- Has the Landlord established entitlement to a monetary order in compensation for rent still outstanding?
- Is the landlord entitled to an order of possession based on the One-Month Notice to End Tenancy for Cause dated July 7, 2009?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in 2000. Current rent being charged was \$676.00 and no security deposit was paid. Starting in May 2009, the tenant fell into arrears and by September 2009 had accumulated \$2,128.00.

The landlord testified that on June 19, 2009, the landlord issued a Ten-Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act and served the tenant by registered mail. According to the Notice, the arrears being claimed at that time were \$1,100.00 but the landlord testified that they continued to accrue and now stand at \$1,828.00, as the tenant recently paid \$300.00 towards the arrears. On July 7, 2009, the landlord also issued a One-Month Notice to End Tenancy for Cause with an effective date of August 31, 2009.

The landlord testified that the landlord is seeking an Order of Possession and a monetary order for \$1,828.00.

The tenant who appeared did not dispute that rental arrears were owed, but stated that without his knowledge, his co-tenant had neglected to pay her share of the rent. The tenant testified that he is doing his best to catch up and should be able to bring the rent up to date by the end of September. The tenant stated that before now, he has a good payment history with this landlord. The tenant stated that he was hopeful of salvaging this tenancy as he has lived in the unit for many years with his son and they have no other place to go.

Analysis: Landlord's Application: Ten-Day Notice

Section 26(1) 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 this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find that the rent was due and payable on the first day of each month and the tenant failed to pay rent when it was due.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent . The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have 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 owed accrued rental arrears for \$1,828.00 rent. I find that the landlord has established a total monetary claim of \$1,878.00 comprised of \$1,828.00 rental arrears and the \$50.00 fee paid by the landlord for this application.

In regards to the portion of the landlord's application relating to the One-Month Notice to end Tenancy for Cause, I find it unnecessary to make any determination on that matter as the tenancy is ending pursuant to section 46, for unpaid rent.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective Thursday, October 15, 2009. 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 \$1,878.00. 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.

The tenant's application is dismissed without leave.

September 2009

Date of Decision

Dispute Resolution Officer