



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 July 8, 2009. The landlord was also seeking a monetary order for rental arrears for \$570.00 per month for 7 months from March 2009 to September 2009 and to be paid the \$285.00 security deposit for a total amount of \$4,275.00. This hearing also dealt with an application by the tenant to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent issued on July 8, 2009.

Both parties appeared and each gave testimony.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and 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. This is contingent upon:
 - Proof that the tenant failed to pay rent owed when it was due

- Proof that a valid Notice was issued and served on the tenant
- Whether or not the Notice was cancelled by the tenant having paid all arrears in full within 5 days after it was served
- 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 July 8, 2009 was valid or 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 was not justified and should be cancelled on that basis.

Preliminary Issue(s)

The representative of the tenant initiated a request for adjournment on the basis that counsel had only just been retained. Counsel testified that it did not have an opportunity to adequately review the evidence and prepare the tenant's case and the tenant's defense against the landlord's application. The representative also pointed out that the tenant had been engaged in discussions with the landlord in regards to a payment plan.

Analysis – Tenant's Request for Adjournment

Rule 6.1 of the Residential Tenancy Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *"written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding."*

Proceedings can be adjourned in some cases, after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at oral or written submissions of the parties and; 1) consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; 2) consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; 3) weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and 4) assess the possible prejudice to each party.

In this instance, on July 21, 2009, the tenant had initiated an application for dispute resolution to cancel the Ten Day Notice dated July 8, 2009, deemed served on July 13, 2009. The landlord submitted its application on July 22, 2009 seeking an order of possession and monetary order based on the Ten-Day Notice. I determined that the tenant had been provided with adequate time to make evidentiary submissions prior to the hearing. I note that no evidence had been received or even proposed that would provide an effective defence for the tenant. There was no suggestion of a pending confirmation to verify that all of the rental arrears were paid by the tenant within the period required under the Act to cancel the notice put forth in support of an adjournment.

Having found that the request for adjournment did not relate to the provision of evidence on the key issue of whether or not any rent was owed, it is clear that an adjournment would serve no productive purpose. Both the landlord and the tenant agreed that rental arrears existed beyond the five-day deadline and, in fact, still do exist at the time of this hearing. I found that verbal testimony or even documentary evidence about the tenant's circumstances and the reasons for non-payment or a failed payment plan would not be in any way material to a determination of whether or not the Ten Day Notice was enforceable and nothing

was purported to function as a defence against the landlord's application for an Order of Possession based on a notice issued under section 46 of the Act.

Given the above, in considering whether the adjournment was required to provide a fair opportunity for a party to prepare the case, I found that the party had sufficient notice of the dispute resolution proceeding and had a reasonable opportunity to submit into evidence such as proof of payment of the arrears. In considering whether the purpose for which the adjournment was being sought would contribute to the resolution of the matter I found that it would not. In assessing the possible prejudice to each party, I note that the Notice to End Tenancy was served on the tenant in July 2009, the applications by the parties occurred on July 21 and July 22, 2009, and it is now the first week of September 2009. It is clear that delaying the hearing further, would be unfairly prejudicial to the landlord.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. The tenant's request for an adjournment was therefore denied.

Background and Evidence

The landlord testified that the tenancy began on March 1, 2009 and that rent was set at \$570.00. The landlord testified that a security deposit of \$285.00 was required and was paid by the tenant through a cheque which was subsequently rejected by the bank. The landlord testified that tenant did not pay any rent at all that was owed during the entire tenancy which spanned the period of March, April, May, June, July, August or September 2009. The landlord testified that, although the tenancy agreement did not require payment of utilities directly to the landlord, the tenant also left utility arrears, for which the landlord will be held responsible. The landlord is therefore seeking a monetary order and an Order of Possession effective immediately.

The tenant testified that the tenant was unable to pay rent due to dire financial circumstances and that the tenant had received the Ten-Day Notice showing rent

was owed and did not pay the arrears. The tenant alleged that in July, the landlord contacted the Ministry in regards to the tenant defaulting on the rent and, according to the tenant, this adversely affected her social benefit entitlement. The tenant also testified that a payment plan was negotiated with the landlord in regards to rent owed.

The landlord acknowledged that a payment plan was discussed, but that the tenant did not participate in the plan and nothing occurred to rectify the arrears or any portion of the arrears.

Analysis

Based on the testimony of both parties, I find that the tenant defaulted on the rent properly due on first of each month since the tenancy began and received a Ten-Day Notice to End Tenancy for Unpaid Rent posted on the door on July 8, 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 must dismiss the tenant's application relating to the request to cancel the Notice. Accordingly I have no option under the Act, but to grant the landlord's application for an Order of Possession.

A mediated discussion ensued and the parties mutually agreed that the tenant will vacate the unit on September 15, 2009.

I find that the landlord is entitled to monetary compensation in the amount of \$3,470.00 comprised of \$570.00 outstanding rental arrears for March 2009, \$570.00 outstanding rental arrears for April 2009, \$570.00 outstanding rental arrears for May 2009, \$570.00 outstanding rental arrears for June 2009, \$570.00 outstanding rental arrears for July 2009, \$570.00 outstanding rental arrears for August 2009 and the \$50.00 paid to file this application.

Conclusion

I hereby issue a monetary order granted in favour of the Landlord under section 67 for \$3,470.00. 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 September 15, 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.

September 2009

Date of Decision

Dispute Resolution Officer