



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, SS, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession and a monetary order for unpaid rent.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Preliminary Issue

The landlord had applied to serve documents or evidence in a different way than required by the *Act*. This was not necessary as the tenant received both evidence and notice of the hearing. I dismiss this part of the landlord's application.

Background and Evidence

The landlord submitted in to evidence the following documents:

- A copy of a tenancy agreement signed by the parties on April 3, 2001 for a month to month tenancy that began on April 1, 2001 with current rent of \$941.85 due on the 1st of the month. A security deposit of \$425.00 was paid on April 3, 2001;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2009 with an effective vacancy date of November 12, 2009 for unpaid rent in the amount of 941.85 for the month of November 2009; and
- A letter from a plumbing contractor regarding replacement of a hot water tank and stating he could not gain appropriate access to the rental unit.

The tenant submitted a list of events into evidence prior to the hearing.

In his written submission and in his testimony the tenant indicated that he could not pay rent because his landlord had changed the lock on the mailbox and the paycheque he had anticipated before the end of October went missing.

The tenant noted that he received a replacement cheque on November 10, 2009 and was able to pay rent at that time. The tenant provided no corroborating evidence to support his assertion that he needed to get a replacement cheque that did not arrive until November 10, 2009.

The tenant further stated that he deducted from his November rent \$129.85 to rent a new mailbox; replace a security bar; and for not getting show cable. He stated he had paid December 2009 rent less \$137.85 for N.S.F. charges he had to pay because of not receiving his paycheque on time.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy for unpaid rent by giving a 10 Day Notice to End the tenancy. The section further states that within 5 days of receiving the notice the tenant may pay the rent or make an application for dispute resolution. The tenant failed to do either.

Subsection (6) of the same section states if the tenant fails to pay rent or file an application for dispute resolution they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

If I were to find that the changing of the mail box locks impacted the tenant's ability to pay his rent when it was due, the tenant did not submit an application to dispute the 10 Day Notice to End the Tenancy or pay the full rent within the 5 days required under this section.

In addition, when the tenant did pay the rent for November, he did not pay the full rent as required under both Section 46 and Section 26. Section 26 requires a tenant to pay the rent when it is due whether or not the landlord complies with the *Act* or the tenancy agreement.

Based on the above I find the tenant had conclusively accepted that the tenancy ended on the effective date of the notice.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$317.70** comprised of \$267.70 rent owed and the \$50.00 fee paid by the Landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 17, 2009.

Dispute Resolution Officer