



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

OPC

MNSD

FF

Introduction

This Application for Dispute Resolution by the landlord indicated that the landlord was seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause dated July 23, 2009 and based on a Notice purporting to End Tenancy for Unpaid Rent dated July 23, 2009. The landlord was seeking a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord testified that the One-Month Notice for cause was served in person to the tenant's roommate on July 23, 2009.

The landlord appeared and two individuals appeared on behalf of the tenant.

Issue(s) to be Decided

The landlord submitted a copy of the One-Month Notice to End Tenancy for Cause dated July 23, 2009 and purporting to be effective August 24, 2009 and a copy of the other Notice that was purporting to end the Tenancy for Unpaid Rent dated July 23, 2009 and indicating it was effective August 31, 2009.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled under the *Residential Tenancy Act*, (the *Act*), to an Order of Possession under *section 55* of the *Act* based on either of the two notices to End Tenancy.
- Whether the landlord is entitled to monetary compensation under *section 67* of the *Act* for rental arrears owed, damages or loss of rent. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the specific amount of rent being claimed is validly owed by this tenant?
 - Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?

Background and Evidence

The landlord submitted a copy of the One-Month Notice to End Tenancy for Cause and a copy of the other Notice purporting to end the Tenancy for Unpaid Rent effective August 31, 2009.

The One-Month Notice to End Tenancy for Cause indicated that the tenant had repeatedly paid rent late. The landlord testified that the late payments began in December 2008 and the arrears were initially caused by a rent cheque that was returned for insufficient funds which the tenant subsequently tried to catch up with a replacement payment, but this would then cause the next month rent cheque not to clear. The landlord testified that repeated attempts were made to discuss the tenant's delinquent account with the tenant, but there was no cooperation. By July 2009, the landlord decided to issue a One-Month Notice for Cause due to repeated late payment of rent. Since that time, the landlord accepted further payments from the tenant, while continuing to make it clear that the funds were being accepted for "use and occupancy only" and that the tenancy was not being reinstated. The landlord testified that the tenant is currently in arrears for \$1,581.00 not including late fees. The landlord testified that since the Notice was issued, one of the tenant's roommates discussed

paying the arrears to bring the account up to date, but nothing transpired from this. The roommates also attempted to take over the tenancy, but the landlord denied the request. The landlord was seeking an end to the tenancy based on the One-Month Notice dated July 23, 2009 and hoped to be granted an Order of Possession for December 31, 2009.

The landlord had also served a Notice for Unpaid Rent, claiming the arrears owed, but had mistakenly used one page from a One-Month Notice and the second page from a Ten-day Notice.

The tenant's representatives testified that the tenant was not informed of the rent shortage until June 2009 and that the landlord had refused their attempts to make a payment arrangement to catch up on the arrears. The tenants were hopeful of a determination that would preserve the tenancy.

Analysis

In regards to the form and content of notice to end tenancy I find that section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this instance, I find that the Notice to End Tenancy showing the rental arrears owed on page 2 was not served on a valid form relating to a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. In fact, the correct form would be a Ten-Day Notice to end Tenancy for Unpaid Rent. Therefore, I find that the Notice claiming rent owed must be cancelled and of no force nor effect.

In regards to the One-Month Notice to End Tenancy for Cause for late payment of rent, dated July 23, 2009, purporting to end the tenancy effective June 24, 2009, I find that the earliest date that such a Notice could be effective in compliance with the Act would be July 31, 2009. I find that the records submitted by the landlord into evidence show that the tenant did repeatedly pay late rent and that, in fact, the tenant is still in arrears at the present time.

The fact that the landlord accepted rent after the effective date of the Notice, including rent for August, September, October and December 2009, brings forth the question of whether or not the notice was waived and the tenancy reinstated. The question of waiver will arise when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given and applicable to a period beyond the effective date of the Notice, in this case payment beyond July 31, 2009. The true intent of the parties must be determined. Intent can be established by evidence as to: whether the receipt shows the money was received for “*use and occupation only*.”; whether the landlord specifically informed the tenant that payment of rent would not reinstate the tenancy and that the money would be for use and occupation only, and the conduct of the parties.

I accept the landlord’s position that the tenant did *not* rely on a perceived reinstatement of tenancy to the tenant’s own detriment, regardless of the fact that the landlord accepted rent. I find that the landlord’s repeated efforts to collect the overdue rent that was still owed with discussions about the pending end of the tenancy, as well as the fact that receipts were issued for “use and occupancy only”, do not support any assumption that the tenancy was ever reinstated after the Notice.

Based on the testimony of the landlord, I find that an Order of Possession must be issued in favour of the landlord based on the One-Month Notice. The reason for this determination is because the tenant was served with a One-Month Notice to End Tenancy for Cause and did not make an application to dispute the Notice. Therefore, under section 47(5) of the Act the tenant is conclusively presumed under 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 under the *Act*.

Conclusion

Based on the above facts I find that the Landlord is entitled to an Order of Possession effective Friday January 1, 2010 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 for the application fee paid by the landlord.

December 2009

Date of Decision

Dispute Resolution Officer