



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and each gave testimony.

Issue(s) to be Decided

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

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated December 3, 2009 with effective date of December 13, 2009, a copy of the resident ledger, copies of written communications between the

parties, a copy of the tenancy agreement and a copy of a receipt for rent paid indicating that it was accepted for "*Use and Occupancy Only*".

The landlord testified that the tenancy began on November 1, 2002, at which time the tenant paid a security deposit of \$395.00. The landlord testified that the tenant failed to pay \$487.33 for October 2009, \$683.00 rent for each of the months of November 2009, December 2009, January 2010 and February 2010 amounting to a total of \$3,450.67 in arrears. The landlord testified that the tenant had since made a partial payment of \$450.00, leaving \$3,000.67 as the current balance owed. The landlord testified that payments were accepted for "use and occupancy only" and that the tenancy was not reinstated. The landlord testified that the tenant has not vacated the unit and has also requested an Order of Possession.

The tenant acknowledged that there were arrears for rent which had not been paid in full within 5 days of receiving the Notice. The tenant testified that no application to dispute the Notice was ever made but was hoping that a payment plan could be arranged with the landlord. The landlord was not willing to make a payment arrangement stating that previous arrangements agreed upon had been defaulted on by the tenant.

Analysis

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 has established a total monetary claim of \$3,050.67 comprised of \$3,000.67.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit

plus interest of \$408.99 in partial satisfaction of the claim leaving a balance due of \$2,641.68

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. Sunday, February 28, 2010. 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 \$2,641.68. 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.

February 2010

Date of Decision

Dispute Resolution Officer