

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord, the landlord's agent and the tenant.

At the outset of the hearing it was established that the tenants have paid all outstanding arrears on rent and as such the landlord's application was amended to deal only with the matter of the order of possession.

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 to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on December 14, 2009 for a 1 year fixed term tenancy beginning on December 15, 2009 for a monthly rent of \$1,750.00 due on the 1st of the month and security deposit of \$875.00 was paid on November 19, 2009;
- A copy of an Application for Tenancy signed by the tenants on November 10, 2009 and by the landlord on November 16, 2009;
- A copy of a letter dated January 14, 2010 requesting remittance of \$124.44 for utilities (gas and hydro);
- Copies of tenant ledgers showing arrears as of February 1, 2010 and February 9, 2010;
- A copy of a cheque from the tenant to the landlord dated January 4, 2010 showing insufficient funds;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 5, 2010 with an effective vacancy date of January 15, 2010 due to \$875.00 unpaid rent;
- A copy of a document entitled "Negotiation of Payment of Rent" dated January 5, 2010 outlining the tenant's agreement to pay part of the rent on January 4, 2010 and the outstanding to be paid on January 14, 2010; and

- Receipts issued by the landlord to the tenant for payments on January 20, 2010, February 5, 2010, February 12, 2010.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of January, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on January 5, 2010 at 3:00 p.m.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

In addition the parties entered into an payment agreement that stipulated that should the tenants fail to make payments as negotiated the landlord will enforce the 10 Day Notice to End Tenancy issued on January 5, 2010.

The landlord testified that all arrears had been paid and rent was current at the hearing but still sought an order of possession. The landlord confirmed the receipts provided into evidence confirmed the tenant had paid all outstanding rent and utilities.

The landlord requested that if the decision was in their favour that they would like to give the tenants until the end of April 2010 to vacate as long as the tenant paid April 2010 rent.

The tenant testified that he had not been paid by one of his suppliers in and around Christmas and that his childcare provider had cashed some post dated cheques in error that resulted in the problems they had had paying rent in January and February 2010.

The tenant was willing to end the tenancy as well, but requested that the landlord allow them to stay until the end of June 2010, as they have children in school. The landlord was not willing to extend the tenancy until the end of June.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 5, 2010 and the effective date of the notice is January 15, 2010.

I accept the evidence before me that the tenants failed to pay the rent owed in full with in the 5 days granted under section 46 (4) of the *Act* or according to the negotiated agreement between the parties.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

As per the landlord's agreement as long as the tenant pays April 2010 rent before the end of business hours on April 1, 2010, I find that the landlord is entitled to an Order of Possession effective **at 1:00 p.m. on April 30, 2010**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

However, should the tenant fail to pay April 2010 rent before the end of business hours on April 1, 2010, 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, no earlier than April 2, 2010, 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 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application. I order the landlord may, in accordance with Section 72 (2)(b) of the *Act*, deduct this amount from the security deposit and interest held in the amount of \$875.00 in satisfaction of this claim.

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: March 03, 2010.

Dispute Resolution Officer