



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **Decision**

#### **Dispute Codes:**

MNDC, 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 dated March 5, 2010, a monetary order for rent owed, an order to retain the security deposit in partial satisfaction of the claim and the \$50.00 cost of filing.

Despite being served by courier with a tracking system to verify delivery, the tenant did not appear.

#### **Issue(s) to be Decided**

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent still owed.

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

#### **Preliminary Matter- Evidence**

An application for an Order of Possession to end a tenancy and a Monetary Order for rent owed is based entirely upon the issuance and service of a Ten-Day Notice to End Tenancy for Unpaid Rent. The burden of proof is on the landlord to establish that such a Notice was issued and was served on the tenant and thus it is vital that a copy of the notice, upon which the landlord intends to rely to support the orders, has been duly submitted into evidence for the purpose of these dispute resolution proceedings.

In this instance, the landlord had neglected to submit into evidence a copy of the Ten-Day Notice to end Tenancy for Unpaid Rent that was allegedly served on the tenant on March 5, 2010. I find that verbal testimony as to the existence and content of the notice did not sufficiently meet the applicant's burden of proof to support a determination to end the tenancy based on the Notice.

I find that if the document existed and was issued and served on the applicant, it should then be before me, as being necessary in order to make a fair and valid determination, based on the evidence before me, as to whether or not an Order of Possession and a monetary order should be issued.

### **Preliminary Matter- Reinstatement of Tenancy**

The landlord testified that, after serving the Notice on March 5 in person, the tenant did not pay the arrears within 5 days as required to cancel the notice. According to the landlord, on March 12, 2010, the tenant made a partial payment of \$600.00 instead of the full rent of \$650.00 for March 2010. The landlord stated that the tenant had deducted \$50.00 instead of the \$25.00 agreed to by the landlord for loss of laundry usage. The landlord testified that no receipt was given by the landlord that specified that the payment was being accepted "*for use and occupancy only*" and that the landlord was still going to proceed with legally ending the tenancy pursuant to the Notice.

The landlord testified that the tenant also paid \$600.00 rent for April 2010 and was now in arrears of \$100.00. According to the landlord, when the rent was accepted, no conversation transpired between the two parties to make it clear that accepting the payment did not serve to reinstate the tenancy, despite their partial payment. I find that, while the landlord may not have intended on reinstating the tenancy, the tenant, having no information otherwise, may have presumed that their payment functioned to erase the Notice.

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

- the receipt shows the money was received for use and occupation only.
- the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties indicates the intention.

In this instance I find that the landlord did not issue a receipt nor advise the tenants upon accepting the payment that this was for “use and occupancy only”. I also find that the conduct of the tenants in not attending the hearing after paying the arrears appears to confirm that they believed that the landlord had withdrawn the monetary order and the order of possession as the tenancy was reinstated.

Given the above, I find that the tenancy was reinstated. The Notice is cancelled and the application for the Order of Possession and Monetary Order must be dismissed without leave due to the reinstatement of the tenancy.

April 2010

Date of Decision

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Dispute Resolution Officer