



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 dated January 4, 2010, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Despite being served by registered mail, 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 of \$750.00 per month for the months of January, February, March and April 2010 and the \$50.00 cost of filing the application.

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

A previous hearing was held on February 16, 2010 on the tenant's application to cancel the Ten-Day Notice issued January 4, 2010 and the tenant was not successful. The findings of the Dispute Resolution Officer included that rent was owed and not paid and that the Notice was enforceable. However, although the landlord was entitled to make a request for an Order of Possession under section 55(1) at that time, this was not done.

Because it has already been determined that the Ten-Day Notice to End Tenancy for Unpaid Rent was valid and enforceable, this matter has already been decided and therefore may not be revisited. *Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties. Therefore no subsequent determination can be made on a matter already decided.

However, the landlord's request for an Order of Possession and the specific issue of monetary compensation for the rent owed was not heard and I find that the landlord therefore retains the right to pursue this claim and have the merits considered.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated January 4, 2010 and a copy of the previous decision dismissing the tenant's application to have the Notice cancelled.

The landlord testified that the tenancy began on May 1, 2009 with rent set at \$750.00 per month and a deposit of \$375.00 was paid. The landlord testified that the tenant failed to pay \$780.00 for rent and parking owed for January 2010 and has not paid since that time accruing arrears totaling 3,120.00 to date . The tenant did not vacate and the landlord now seeks both a monetary order for accrued rental arrears and an Order of Possession based on the Notice, found to be valid at the prior hearing.

Analysis

Based on the testimony of the landlord, the tenant has not paid the outstanding rent and has not vacated. I find that the that the tenancy was rightfully to end 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 \$3,170.00 comprised of \$3,120.00 for accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim leaving a balance due of \$2,795.00.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. 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 \$2,795.00. 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.

April 2010

Date of Decision

Dispute Resolution Officer