

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and for Orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession, a Monetary Order for unpaid rent, retention of the security deposit and damage or loss under the Act, regulation or tenancy agreement. The tenant did not appear at the hearing. The landlord appeared at the hearing and confirmed receiving the tenant's application and was prepared to respond to the tenant's application. The landlord testified that the tenant was served with the landlord's application within three days of making the application by personal service in the presence of a witness.

Since the tenant did not appear and the landlord was prepared to respond to the tenant's application, I dismissed the tenant's application without leave to reapply.

As I was satisfied the landlord sufficiently served the tenant, I proceeded to hear from the landlord with respect to the landlord's application.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent, loss of rent, or damages to the rental unit?
3. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The landlord provided the following evidence. The month to month tenancy commenced November 15, 2009 and the tenant is required to pay rent of \$500.00 on

the 1st day of every month. The tenant paid a \$250.00 security deposit. The tenant made a payment of \$180.00 and another payment of \$190.00 towards the rent owed for March 2010. On March 3, 2010 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door. The tenant did not pay the \$130.00 owed for March 2010 but did pay rent for April 2010. The landlord stated that in accepting rent for April 2010 the landlord informed the tenant he would have to vacate by the end of April 2010. As of today's date the tenant still occupies the rental unit.

The landlord is seeking to recover \$130.00 in outstanding rent for March 2010, \$50.00 for carpet cleaning, \$125.00 for damaged blinds and \$50.00 for the filing fee for a total request of \$355.00.

Neither the landlord nor the tenant provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent in making their respective applications. The landlord advised that he could not produce a copy of the Notice as he served the original upon the tenant and did not make a copy. The tenant's application indicates he was served with a Notice to End Tenancy for unpaid rent on March 3, 2010.

The landlord provided a copy of the tenancy agreement and two receipts showing the partial payments made for March 2010.

The landlord tried to introduce evidence related to a fire in the rental unit two days ago and other recent behaviour by the tenant; however, since the application before me only relates to rent, carpet cleaning and damaged blinds, I found that testimony to be not relevant to the matter at hand. Rather, the landlord was informed of the landlord's right to request an early end to tenancy by making an application for such.

Analysis

Section 46 provides that where a tenant fails to pay rent when due, the landlord may end the tenancy by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Upon

receipt of a 10 Day Notice, the tenant has five days to dispute the Notice or pay the outstanding rent. The tenant disputed the Notice; however, the tenant's application has been dismissed.

I find the evidence before me substantiates that the tenant owes the landlord \$130.00 for rent for March 2010. I award the landlord \$130.00 for unpaid rent for March 2010 and the \$50.00 filing fee paid for this application. The landlord is authorized to deduct \$180.00 from the tenant's security deposit in satisfaction of this award.

I find the claim for carpet cleaning and damaged blinds to be premature since the tenant still occupies the rental unit. The landlord's claim for damages is dismissed with leave to reapply.

I find there is consistent evidence that a Notice to End Tenancy was served upon the tenant on March 3, 2010; however, I find I do not have sufficient evidence, such as a copy of the 10 Day Notice served upon the tenant, to determine the validity of the Notice issued. Therefore, I do not provide an Order of Possession with this decision and I dismiss the landlord's request for an Order of Possession for unpaid rent.

Conclusion

The tenant's application was dismissed. The landlord has been awarded \$180.00 for unpaid rent and recovery of the filing fee and the landlord is authorized to deduct this amount from the tenant's security deposit. The landlord's request for an Order of Possession was dismissed.

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: April 27, 2010.

Dispute Resolution Officer