

DECISION

Dispute Codes MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy began in or about November 2009. Rent was set at \$600.00 per month. The landlord testified that the tenant failed to pay rent when it was due on March 1 and on March 4, 2009 the landlord personally served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The landlord's wife testified that she witnessed the service of the Notice and saw the tenant place the Notice on his refrigerator. The tenant was asked several times whether he received the Notice and he answered that he recalled having been served with a notice to end tenancy in February and that he had a heart attack in March. After several attempts to elicit a clear answer from the tenant, he eventually denied having received the Notice.

The parties agreed that the rent was paid in full on or about March 16 and that the landlord accepted the rent for use and occupancy only. The landlord testified that at the time the parties entered into the tenancy agreement, they verbally agreed that the tenant would pay 1/3 of the utility costs for the property. The tenant denied having made any such agreement. The tenancy agreement is silent on the issue of utilities. In the month of December the tenant testified that the landlord came to his door asking for

money and that the tenant gave him \$30.00 at that time, but the tenant gave the money because he wasn't sure how to respond to the request.

The landlord seeks an order of possession based on the Notice and a monetary order for \$103.78 in unpaid utilities.

Analysis

The testimony of the parties is in direct conflict as to whether or not the tenant was served with the Notice, which requires me to make a finding of credibility. Having reviewed the testimony and evidence, I prefer the testimony of the landlord, which was corroborated by his wife. I found the tenant to be evasive in his answers and given that the landlord has been in the practice of serving notices to end tenancy when the tenant was late with his rent, I find it more likely than not that the tenant was served with the Notice on March 4. I find that the tenant did not pay the outstanding rent or dispute the Notice within 5 days of receiving the Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I grant the landlord an order of possession. The tenant must be served with the order. If the tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

As for the monetary order, I find that the landlord has failed to prove on the balance of probabilities that the tenant agreed to pay for 1/3 of the utilities and I dismiss the claim for the cost of utilities.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring this application. The landlord may deduct \$50.00 from the security deposit.

Conclusion

The landlord is granted an order of possession and may deduct \$50.00 from the tenant's security deposit as recovery of his filing fee. The tenant is not obligated to pay for utilities and the landlord's claim for utility payments is dismissed.

Dated: April 13, 2010
