

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord requesting an order of possession based on unpaid rent and utilities, based on cause including repeated late payment of rent, and monetary orders for unpaid rent and utilities, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 25, 2010, deemed served five days later under the Act, and an amended Application on March 2, 2010, by personal service, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

The Landlord and two Agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the uncontradicted testimony of the Landlord and her Agents, I find that the Tenant was served with a one month Notice to End Tenancy on February 12, 2010, by personal service. The Landlord testified the service was witnessed by the police. The effective date of the one month Notice was March 31, 2010. The Notice alleges repeated late payment of rent as well as other causes. The rent is due on the first day of the month and is \$800.00 per month. The Landlord testified the Tenant was late paying rent in November and December of 2009, and in January and February of 2010. The Tenant did not pay rent for March 2010 as well.

The Tenant was then served with a 10 day Notice to End Tenancy for unpaid rent on March 2, 2010, by posting on the doors and witnessed by an Agent for the Landlord.

The effective date of the 10 day Notice was March 12, 2010. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The uncontradicted testimony of the Landlord is that no March rent has been paid. There is no evidence that the Tenant filed to dispute the 10 day Notice to End Tenancy or the earlier one month Notice.

The uncontradicted testimony and evidence of the Landlord is that the Tenant has also failed to pay utilities and natural gas.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenant is in breach of the Act and Tenancy Agreement.

The Tenant has not paid the outstanding rent and did not apply to dispute the 10 day Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, March 12, 2010.

I further find the Tenant has been repeatedly late paying rent and therefore the one month Notice is valid as well. However, as the 10 day Notice for unpaid rent came after the one month Notice, the effective end date of the tenancy is now March 12, 2010, and no longer March 31, 2010.

Therefore, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on March 14, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of **\$974.07**, comprised of \$800.00 in unpaid rent, \$101.18 for utilities, \$22.89 for gas and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$400.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$574.07**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. This ended the tenancy earlier than the one month Notice would have.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

The Landlord has leave to apply for further monetary claims.

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 12, 2010.

Dispute Resolution Officer