

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent and an Application for Dispute Resolution by the tenant to cancel the notice to end tenancy

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Near the end of the hearing I requested the landlord submit a copy of the tenancy agreement. The landlord provided the tenancy agreement by facsimile by 10:38 a.m. on today's date.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided whether the tenant is entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on March 12, 2010 for a 1 year fixed term tenancy beginning on April 1, 2010 for the monthly rent of \$800.00 due on the last day of the month and a security deposit of \$400.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 1, 2010 with an effective vacancy date of June 12, 2010 due to \$800.00 in unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of June and July 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on June 1, 2010.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant applied to dispute the Notice to End Tenancy within five days.

The tenant testified that she has lost her job and is unable to pay the rent but that she is trying to find new employment and when she does she will be able to pay rent owed to the landlord.

The landlord offered to negotiate a payment plan but the parties were unable to reach an agreement during the hearing. The landlord agreed to take possession of the rental unit effective July 31, 2010.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 1, 2010 and the effective date of the notice is June 12, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Despite the situation the tenant is currently in Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. The tenant cannot stop paying rent because of her employment situation.

As such, I find that the tenant has failed to pay the rent as confirmed by both parties and the landlord is entitled to end the tenancy in accordance with Section 46. I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **July 31, 2010 after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,650.00** comprised of \$1,600.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,150.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: July 22, 2010.

Dispute Resolution Officer