



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 July 8, 2010, 2010, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing , the tenant did not appear.

At the outset of the hearing the landlord advised that the tenant had vacated the unit on August 31, 2010 leaving no forwarding address. Therefore, the portion of the landlord's application regarding the request for an Order of Possession need not be determined.

Preliminary Issue: Tenant's Request for Adjournment

Prior to the hearing date, the tenant initiated a written request for adjournment on the basis that the tenant was scheduled to work on the day of the hearing and his co-tenant could not respond as she did not speak fluent English.

Rule 6.1 of the Residential Tenancy Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *"written consent from both the applicant and the respondent is received by the*

Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.”

In this instance, I find no indication that the Respondent had sought or received the required consent from the Applicant. In any case, the Residential Tenancy Rules of Procedure would always require that the Dispute Resolution Officer consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; 2) consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; 3) weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and 4) assess the possible prejudice to each party.

I find that adjourning these proceedings would not contribute to the resolution of the matter and would prejudice the Applicant. I note that a Ten-Day Notice was issued by the landlord in July 2010 and served on the tenant, after which the tenant had 5 days to either pay the arrears in full to cancel the Notice, or file an application to dispute the Notice. These are the two matters of critical importance to be considered in this hearing. As the tenant evidently did neither, I find that delaying the hearing would not serve any useful purpose in this regard.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other party. The tenant's request for an adjournment was therefore denied and the hearing proceeded as scheduled.

Preliminary Issue: Submission of Evidence

The tenant had submitted an evidence package received by Residential Tenancy Branch on September 10, 2010. The landlord testified that the tenant's evidence was never served on the landlord.

The landlord had also submitted additional evidence received by RTB on September 13, 2010 and September 14, 2010. However, because the tenant had vacated on August 31, 2010, it is apparent that the landlord was not able to serve this evidence on the tenant.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*” Section 88 and 89 of the Act specifies how and when documents must be served.

In addition to the above, Residential Tenancy Rules of Procedure, Rule 3, requires that the applicant must submit evidence to the Residential Tenancy Office and serve all evidence being relied upon to the respondent at the same time as the application is filed if possible or at least (5) days before the dispute resolution proceeding.

Residential Tenancy Rules of Procedure, Rule 4.1 states that, if the respondent intends to dispute the application, copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

In the case before me, I find that, although the evidence was submitted to the Dispute Resolution file, none of the tenant's evidence was served on the landlord and the landlord also failed to serve a portion of the landlord's evidence on the tenant because the tenant had vacated.

I found that I must decline to accept or consider any evidence that was not properly served on the other party. However, I found that any evidence confirmed as being received and served prior to August 31, 2010 would be considered as well as any testimony provided during the proceedings.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 8, 2010 with effective date of July 31, 2010, a copy of the rental payment history and a copy of the tenancy agreement, in addition to other documents including copies of communications between the parties. The landlord testified that the tenancy began in August 2007, at which time a security deposit of \$315.00 was paid. The landlord testified that the tenant fell into arrears in rent and by July 8, 2010 had accrued a debt of \$4,025.00. The current total for the arrears is now \$4,650.00.

The landlord testified that the tenant has vacated the unit and left damages which may be pursued in future. The landlord has requested a monetary order for rent in the amount of \$4,650.00 plus the cost of filing the application.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the rent when rent was due and this was a violation of section 26 of the Act. I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent and the tenant has not paid the outstanding rent and did not apply to dispute the Notice.

Given the above, I find that the landlord has established a total monetary claim of \$4,700.00 comprised of \$4,650.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the

security deposit and interest of \$321.73 in partial satisfaction of the claim leaving a balance due of \$4,378.27.

Conclusion

I hereby grant the Landlord an order under section 67 for \$4,378.27. 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.

September 2010

Date of Decision

Dispute Resolution Officer