



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 4, 2010, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

The landlord appeared but the tenant did not appear despite being served with the Notice of Hearing and application package in person on July 15, 2010.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$3,495.00 and the \$50.00 cost of filing the application.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

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 4, 2010 with effective date of July 14, 2010, and a copy of the rental application. The landlord testified that the tenancy began on September 1, 2007. The rent was set at \$1,300.00 and a security deposit of \$1,300.00 was paid.

The landlord testified that the tenant fell into arrears for \$570.00 owed for April 2010, \$325.00 owed for June, \$1,300 owed for July 2010 and \$1,300.00 owed for August 2010 for total arrears of \$3,495.00. The landlord testified that the tenant had since paid some of the arrears in increments totaling \$2,450.00. The landlord accepted the payments and issued receipts, but did not write, "*for use and occupation only*" on the receipts.

The landlord was seeking a monetary order for the remaining arrears of \$720.00 and an order of possession based on the notice.

Preliminary issue

The landlord testified that the tenant paid all of the outstanding arrears in full by certified cheque. The landlord had testified that no receipt was given stating that the payment did not serve to reinstate the tenancy between the parties or that the payment was being accepted "*for use and occupancy only*". The landlord was not able to confirm that any conversation transpired on this subject between the two parties to make sure the tenant understood that, despite their payment, the tenancy was not reinstated. I find that, while the landlord may not have intended on reinstating the tenancy, the tenant, having no information otherwise, may have presumed that their payment functioned to erase the Notice.

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

- the receipt shows the money was received for use and occupation only.
- the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties indicates the intention.

In this instance I find that the landlord did not issue a receipt nor advise the tenants upon accepting the payment that this was for “use and occupancy only”. Given the above, I find that the tenancy was reinstated. The portion of the landlord’s application relating to the Order of Possession must be dismissed.

In regards to the \$720.00 still owed, I find that the landlord is still entitled to this amount for rental arrears owed by the tenant.

I find that the landlord has established a total monetary claim of \$770.00 comprised of \$720.00 remaining rental arrears and the \$50.00 fee paid by the landlord for this application.

During the course of these proceedings, it was established that the landlord had collected a security deposit from the tenant of in an amount that exceeded that permitted under the law.

Section 19 (1) of the Act states that:

“a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.”

And section 19(2) states that,

“If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.”

In this instance I find that the landlord had collected a \$1,300.00 security deposit from the tenant but was only legally permitted to collect \$650.00. Because the Act legally permits the tenant to deduct the security deposit overcharge from rent

owed, I find that the monetary order and debt to the landlord must be reduced by \$650.00 plus \$13.06 interest amounting to a total credit towards the debt of \$663.06.

Therefore, after deducting the excessive deposit, I find that the tenant still owes the landlord a net amount of rental arrears of \$106.94.

Conclusion

The portion of the landlord's application seeking an Order of Possession is hereby dismissed as the tenancy was reinstated after the July 4, 2010 Notice.

I order that the balance of the tenant's security deposit currently being held in trust by the landlord is now \$650.00 plus interest, after having been reduced to the amount that is allowed under the Act and after the excess charges were credited towards the tenant's rental arrears owed to the landlord.

I hereby issue a monetary Order in favour of the landlord under section 67 for \$106.94. 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