

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, CNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord had applied for:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant had applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Despite being served by registered mail sent on August 16, 2010, the tenant did not appear and the hearing proceeded in the tenant's absence.

Issues to be decided:

Is the landlord entitled to an order of possession and monetary compensation for unpaid rent based on the Ten-Day Notice? Or should the Notice be cancelled?

Background and Evidence

Based on the testimony of the landlord, the background is as follows. The tenancy started on June 1, 2010 with rent of \$795.00 and \$397.50 security deposit paid. The tenant had submitted into evidence a copy of the Ten-day Notice and a written statement and the landlord had submitted proof of service, written testimony, a copy of the tenancy agreement and a Move-in Condition Inspection Report. The landlord testified that the tenant failed to pay \$420.00 of the rent owed for June 2010, \$397.50 rent for August 2010 and \$397.50 rent for September 2010 accruing total arrears of \$1,215.00. A Ten-Day Notice to End Tenancy was issued on August 3, 2010, effective August 13, 2010. The landlord was seeking a monetary order for \$1,215.00 for rent,

\$50.00 for the cost of filing and an order of possession.

Analysis:

I find that 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. A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that the tenant owed rental arrears of \$1,215.00 and failed to pay the arrears within five days of receiving the Notice which would have served to automatically cancel the Notice. I therefore find that the Notice for unpaid rent was supported under section 46 of the Act. Based on the evidence of both parties, I find that the landlord is entitled to an Order of Possession and monetary order for rent owed.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to \$1,265.00 comprised of \$1,215.00 rental arrears and the \$50.00 cost of filing this application. I order that the landlord retain the security deposit and interest of \$397.50 leaving a balance owed \$867.50 and I hereby grant the landlord an order for \$867.50. 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.

The tenant's application is dismissed in its entirety, without leave to reapply.

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*.

September 2010

Date of Decision

Dispute Resolution Officer