



Dispute Resolution Services

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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 31, 2010 and a monetary order for rent owed and unpaid since March 2010.

Both parties appeared and gave testimony during the conference call hearing.

Issue(s) to be Decided

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 and whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 31, 2010 with effective date of August 10, 2010. The tenancy began on November 1, 2009, at which time the tenant paid a security deposit of \$500.00. The landlord testified that the tenant failed to pay \$950.00 rent for the months of April 2010, May 2010, June 2010, July 2010, August 2010 and September 2010, accruing arrears in the amount of \$5,700.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

The tenant acknowledged that the rent was not paid to the landlord and testified that this was because she was informed by others that the applicant was not the landlord. The tenant testified that after she received the Ten Day Notice to End Tenancy for Unpaid Rent, she did not file an application to dispute the Notice nor pay the arrears within 5 days to cancel the notice, but instead sought legal advice and guidance from several sources. The tenant testified that she was instructed not to pay any rent to the original landlord, because this individual was no longer the legal owner of the subject

property. The tenant confirmed that she also did not pay rent to any other person or organization purporting to be the landlord. The tenant submitted copies of a petition to the court and other documents involved in a legal proceeding between the landlord and a bank. The tenant stated that attempts were made to serve these documents on the landlord prior to the hearing without success. The tenant's position was that the Ten-Day Notice should not be enforced because of the landlord's status.

Preliminary Matter

The tenant questioned the applicant's authority as the landlord of the subject property and her right to receive rent and issue a Ten-day Notice.

Section 1 of the Act contains a definition of "landlord" and this includes any of the following:

- the owner of the rental unit, the owner's agent or one who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act or agreement;
- the heirs, assigns, personal representatives and successors in title to a person referred to above
- a person, other than a tenant occupying the rental unit, who (i) is entitled to possession of the rental unit, and (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- a former landlord, when the context requires this;

I find that the applicant was, or is, the landlord and had authority to issue and serve the Ten-Day Notice due to non-payment of rent due on April 1, 2010 and thereafter.

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 the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that the tenant did neither.

The Ten-day Notice also included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading "Important Facts" the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the Notice was served on July 31, 2010 and the tenant did not pay the arrears and in fact continued to withhold her rent for subsequent months afterward.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that the tenant did not pay the outstanding rent within 5 days and did not apply to dispute the 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. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$5,750.00 comprised of \$5,700.00 for the six months of accrued rental arrears between April and September inclusive, at \$950.00 per month and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim leaving a balance due of \$5,250.00.

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 hereby grant the Landlord an order under section 67 for \$5,250.00. 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.

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: September 2010.

Dispute Resolution Officer