

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 15, 2010 which was purportedly amended on August 15, 2010 and a monetary order for rent owed and for other costs.

Both parties appeared and gave testimony during the conference call.

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

Whether or not the landlord is entitled to monetary compensation for rental arrears owed

Whether or not the landlord is entitled to damages for costs incurred for repairs

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 15, 2010 with effective date of July 28, 2010, copies of previous Notices, copies of billing statements, copies of communications, copies of invoices for cleaning and repairs, a copy of a log sheet for contractor call-outs and a copy of an agreement for repaying rent arrears dated July 28, 2009.

The tenancy began in August 2007 and the current rent is \$442.00. No Security deposit was paid. The landlord testified that the tenant failed to pay rent of \$442.00 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that after the Notice was issued on July 15, 2010, the landlord re-issued the same Notice on August 15, 2010 with an amended monetary amount claiming additional costs incurred

by the landlord for repairs and cleanup for a total of \$1,035.03 owed by the tenant. The landlord testified that the tenant had committed to paying for the damages in a negotiated agreement. The landlord testified that the tenant has not paid nor vacated the unit and the landlord requested an Order of Possession.

The tenant did not dispute that rent was owed. The tenant stated that there was a problem with her social benefits that resulted in a shortfall that kept impacting each month in succession and the financial statements from the landlord are confusing . However, the tenant testified that after the Ten Day Notice to End Tenancy for Unpaid Rent was initially issued, discussions were initiated for a repayment plan. The tenant stated that there was a commitment by the Ministry to bring the arrears up to date on her behalf. The tenant testified that the amended Ten-Day Notice which was accompanied by a letter about meeting to resolve the matter on August 15, 2010, caused the tenant to expect that the original Notice was no longer going to be enforced.

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.

When a tenant fails to comply with section 26, then 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.

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*".

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.

In regards to the tenant's argument that the revised Ten Day Notice to End Tenancy for Unpaid Rent confused the tenant, I find that the purported amendment occurred a month after the Notice was first issued. This was well after the 5-day deadline to pay the arrears and cancel the notice or make application to dispute the notice.

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.

In regards to the landlord's application for monetary compensation, I find that a Ten-Day Notice under section 46 of the Act relates only to rent owed and cannot include a claim for damages. A Notice also cannot be amended or withdrawn once it is issued unless the parties are mutually reinstating the tenancy. Moreover, the landlord's application was seeking an Order of Possession and rent owed based on a Notice issued under section 46 of the Act. The landlord's application did not include a separate claim for damages under sections 7 and 67 based on the tenant's noncompliance with the Act. Accordingly I find that the portion of the landlord's application seeking damages must be dismissed and I do so with leave to reapply.

Based on the evidence and testimony, I find that the landlord is entitled to monetary compensation in the amount of \$442.00 for rental arrears,

A mediated discussion ensued and the parties agreed that the order of possession would be effective on October 31, 2010 and would be held in abeyance pending further discussion. The parties agreed to meet to negotiate payment of arrears and damages and the possibility of reinstating the tenancy.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective October 31, 2010. 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 \$442.00 for rent owed. 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