

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 30, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on August 4, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2010. Rent is payable on the first of each month in the amount of \$725.00. The Tenant paid a security deposit of \$362.50

on approximately February 20, 2010; however the cheque was returned NSF and replaced with \$362.50 cash approximately March 5, 2010.

The Landlord confirmed that a 10 Day Notice to End Tenancy for unpaid rent was posted to the Tenant's door on June 10, 2010 due to \$1,575.00 in unpaid rent. The Landlord testified that he has allowed the Tenant to catch up on the arrears with payments received from Income Assistance and the Tenant. The current balance owing as of September 20, 2010 is \$282.50.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports the 10 Day Notice was posted to the Tenant's door on June 10, 2010. The notice is deemed to have been received on June 13, 2010, three days after it was posted, in accordance with section 90 of the Act, and the effective date is June 23, 2010.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances the Landlord was able to accept rent for the period up to June 23, 2010, without waiving the 10 Day Notice to End Tenancy. If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In these circumstances the Landlord had accepted rent of for periods after June 23, 2010, and therefore has waved the Notice and reinstated the tenancy.

The Landlord claims for unpaid rent of \$282.50 which was due September 1, 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I approve the Landlord's claim for unpaid rent.

The Landlord has been partially successful with his application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy issued June 10, 2010, is HEREBY CANCELLED and is of no force or effect.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$332.50** (\$282.50 + \$50.00). The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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 20, 2010.

Dispute Resolution Officer