

Decision

Dispute Codes:

MNR, MNDC, OPR, 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 September 3, 2010, a monetary order for rent owed and compensation for the cost of filing the application.

Both parties appeared and gave testimony.

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 and loss of rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated September 3, 2010 with effective date of September 19, 2010, copies of cheques and a copies of communications between the parties. The landlord testified that the tenancy began on June 1, 2010, with rent of \$200.00. The landlord testified that the tenant failed to pay \$200.00 rent for the months of July, August and September 2010 and a Ten-Day Notice was issued and mailed on September 3, 2010. The landlord testified that on September 22, 2010, the tenant subsequently paid \$600.00 for the outstanding rent and was issued a receipt "*for use and occupancy only*". The landlord testified that in September the tenant had attempted to pay rent in advance for future months but this was declined by the landlord. The landlord testified that the tenant now only owes \$200.00 representing rent for October 2010. The landlord testified that the

tenant has not vacated the unit and is seeking an Order of Possession and monetary compensation of \$200.00.

The tenant testified that the landlord owed the tenant funds for work agreed-upon by the parties and therefore the rent was not in arrears.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

I find that there was a verbal tenancy agreement with rent set at \$200.00. While I accept that there may also have been some kind of other contract between these parties which required the tenant to perform work and receive some kind of compensation or credit, this is not a matter that would fall within my authority to determine under the Act.

In regards to the tenancy matter and based on the testimony of the landlord, I find that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent by registered mail sent on September 3, 2010. The tenant did not pay the outstanding rent within 5 days of receiving the Notice, deemed under section 90 of the Act to have been served on September 8, 2010. Had the tenant satisfied the arrears within 5 days, this would have functioned to cancel the Notice. The tenant also did not make an application to dispute the Notice within 5 days 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, I find the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$250.00 comprised of unpaid rent for October 2010 and the \$50.00 fee paid by the landlord for this application.

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 \$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*.