

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 October 28, 2010, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 5, 2010 the tenant did not appear.

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 October 28, 2010 with effective date of November 7, 2010, a copy of the tenant's Shelter Information sheet and proof of service of the Ten Day Notice to End Tenancy for Unpaid Rent . The landlord testified that the tenancy began in June 2008, at which time the tenant paid a security deposit of \$325.00. The landlord testified that the tenant failed to pay \$725.00 rent for the month of October and \$400.00 accrued utility bills amounting to a total of \$1,125.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by **posting it on the door. The tenant has not paid the outstanding rent 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 utility claim, section 46(6) states that a notice based on utilities can be issued only if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant receives a written demand for payment of them. If the above conditions are met then a landlord would be permitted to treat unpaid utility charges as unpaid rent and give notice on this basis. Given the above, I find that the portion of the landlord's monetary claim relating to utilities must be dismissed. However, as the Ten Day Notice to End Tenancy was not based solely on utilities owed and was also based on unpaid rent, I find that the landlord is entitled to rental arrears claimed .

I find that the landlord has established a total monetary claim of \$775.00.00 comprised of \$725.00 rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$327.85 in partial satisfaction of the claim leaving a balance due of \$447.15.

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 \$447.15. 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: November 2010.

Dispute Resolution Officer