

Decision

Dispute Codes:

MT, CNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated November 4, 2010 and effective November 14, 2010. The tenant's application also requested a monetary Order for damages in the amount of \$15,000.00. The hearing also dealt with the landlord's application for an Order of Possession based on the November 4, 2010 Ten Day Notice to End Tenancy for Unpaid Rent and a monetary order for rent owed.

Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession and monetary order based on the Ten-Day Notice to End Tenancy for Unpaid Rent or whether it should be cancelled as requested by the tenant.
 - Did the tenant violate the Act by failing to pay rent when rent was due?
 - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?
- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination depends upon whether the claimant presented proof 1) That the cause of the damage or loss was the respondent's actions in violation of the Act or the tenancy agreement; 2) of the monetary value of the damage or loss.

The burden of proof was on the landlord to justify the reason for the Ten-Day Notice. The burden of proof was on the tenant to prove that monetary compensation for damages is warranted.

Background and Evidence - Ten-Day Notice to End Tenancy

Submitted into evidence was a copy of the Ten-Day Notice to End Tenancy dated November 4, 2010 and proof of service of the Ten-Day Notice. All agreed that the tenancy began in April 2010 with rent of \$650.00 and \$325.00 security deposit.

The landlord testified that the tenant had not paid rent for the month of November and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant has stated that the \$650.00 rent for December 2010 will not be paid either. The landlord is requesting monetary compensation of \$1,300.00 plus the \$50.00 filing fee and an Order of Possession.

In regards to the failure to pay rent, the tenant testified he had not paid November rent nor did he intend on paying any rent in future and stated that he would not be vacating the unit either. The tenant did not provide a reason for his stance on this matter.

Analysis – Notice to End Tenancy

Section 26 of the Act states rent must be paid when due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement.

I find that the tenant admitted that he did not pay the rent when it was due for November 2010 and did not pay the arrears within 5 days of receiving the Notice to End Tenancy for Unpaid Rent. Accordingly, I must dismiss the portion of the tenant's application requesting an order to cancel the Ten-Day Notice. Based on the above facts I find that the November 4 Notice is valid and the landlord is entitled to an Order of Possession.

I find that the landlord has established total monetary compensation of \$1,350.00 comprised of \$650.00 rent for November 2010, \$650 rent for December 2010 and the \$50.00 fee paid by the landlord for this application.

Background and Evidence – Tenant's Claim for Monetary Compensation

The tenant was requesting monetary compensation in the amount of \$15,00.00. No evidence was submitted in support of the tenant's claim. However, the tenant verbally testified that in August 2010, after the tenant received a Ten Day Notice to End Tenancy for Unpaid Rent, the landlord used bolt cutters to remove his lock and forcibly entered the tenant's rental unit. According to the tenant, the landlord started to pack up the tenant's possessions and discarded some items. The tenant testified that the landlord's actions had traumatized the tenant and he was forced to retrieve some of his personal

possessions from the garbage. In regards to what was lost, if anything, the tenant was not able to verbally describe any missing items.

The tenant's witness supported the tenant's testimony and testified that the landlord had barged into the unit, verbally abused the tenant and began removing the tenant's possessions without legal authority to do so. The witness stated that this action by the landlord had affected the tenant's health problems and emotional well-being.

The landlord acknowledged that an incident had occurred in which the landlord entered the tenant's unit. The landlord stated that this stemmed from a mistaken presumption that the landlord had the authority to physically take possession of the unit at the end of the ten-day period specified in the Notice. The landlord stated that it is now aware that it must first obtain an Order of Possession and that there are also further legal steps that must first be followed before it can take possession against the tenant's will.

Analysis: Tenant's Claim for Monetary Compensation

In regards to the tenant's claim for \$15,000.00 damages from the landlord, section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7 and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove that a monetary loss was suffered due to the landlord's violation of the Act.

The Act provides that when a tenant fails to comply with section 26 of the Act, which requires the payment of rent when it's due, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective 10 days after the date the tenant receives it. If the rent owed is still unpaid after 5 days and the tenant does not leave, the landlord can then apply for an Order of Possession based on the Notice. If the tenant still does not vacate the unit, section 57 of the Act states that the landlord must not take physical possession of a rental unit that is occupied by the over-holding tenant unless the landlord also obtains a writ of possession issued under the Supreme Court Civil Rules.

In this instance I accept the tenant's testimony that the landlord ignored the above procedures and violated the Act by trying to physically evict the tenant without going through the due process as required under the law.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this instance I find that the tenant's right to quiet enjoyment of the suite was compromised by the landlord's wanton violation of the Act and this devalued his tenancy during the period which the landlord entered the suite illegally. Based on the testimony and evidence, I find that the tenant is entitled to a partial rent abatement in the amount of \$100.00 for the loss of enjoyment and use of the unit for the affected period of time.

Conclusion

I hereby dismiss the portion of the tenant's application seeking cancellation of the November 4, 2010 Ten Day Notice to End Tenancy for Unpaid Rent and 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.

Based on the testimony and evidence, I find that the landlord is entitled to monetary compensation for rent owed in the amount of \$1,300.00 plus the \$50.00 cost of filing.

I further find that the tenant is entitled to a rental abatement in the amount of \$100.00 due to the transgressions perpetrated by the landlord.

Setting off the two amounts, I find that, after deducting the \$100.00 monetary compensation and rent abatement owed to the tenant, the remainder still owed to the landlord is \$1,250.00. As this tenancy is ending, I order that the tenant's security deposit of \$325.00 be applied to reduce the debt owed, leaving a balance in favour of the landlord of \$925.00.

I hereby grant the Landlord an order under section 67 for \$925.00. 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.

The remainder of the tenant's application is dismissed without leave to reapply.

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: December, 2010.

Dispute Resolution Officer