



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNR, 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 December 24, 2010, and a monetary order for rent owed and loss of rent.

At the outset of the hearing the landlord advised that the tenant had paid all of the rental arrears for the month of January 2011 in two instalments, but the payment was not received within the 5 days permitted to cancel the Notice. However, the landlord is still seeking loss of rent in the amount of \$1,100.00 for the month of February 2011.

Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and a monetary order. 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 and whether or not the landlord is entitled to monetary compensation for loss of rent.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated December 24, 2010 with effective date of January 3, 2011, a copy of the fixed term tenancy agreement that was to end on March 31, 2011, and a copy of the tenant's \$700.00 cheque returned by the bank.

The fixed term tenancy began on November 22, 2010, at which time the tenant paid a security deposit of \$500.00. The rent was \$1,100.00 per month due in advance on the 22nd of each month. The landlord testified that the tenant failed to pay \$1,100.00 of the rent for January and a Notice was issued. The tenant paid \$500.00 and gave the landlord a cheque for \$700.00 within 5 days, which failed to clear. The landlord

received the \$700.00 in January 2011 after the five-day deadline and still seeks to end the tenancy. The landlord testified that rent owed for February due on January 22, 2011 was not paid. The landlord is seeking \$1,100.00 for February 2011.

The tenant testified that the returned cheque was due to a bank error. The tenant stated that the tenancy will be ended as of January 27, 2011 as he is moving out. The tenant did not agree with the landlord's claim for \$1,100.00 loss of rent for February 2011.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. The tenant did not pay the outstanding rent within 5 days to cancel the Notice and the tenant did not make an application to dispute the Notice. It is therefore conclusively presumed under section 46(5) of the Act that the tenant 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.

I find that the landlord is entitled to receive \$1,100.00 loss of rent for February 2011 due on January 22, 2011 and I find that the landlord has established a total monetary claim of \$1,150.00 including the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim leaving a balance due of \$650.00.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective January 27, 2011. 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 \$650.00. 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*.

Dated: January 2011.

Residential Tenancy Branch