



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF, ET, O

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain a part or all of the security deposit in full or partial satisfaction of the claim; for an order ending the tenancy early and obtaining an Order of Possession; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing with counsel. The tenant did not attend but an agent attended the hearing to apply to adjourn this hearing on behalf of the tenant. The agent did not have instructions to deal with the application and applied to adjourn the hearing to February 28, 2011 when the tenant's application for dispute resolution is scheduled to be heard. The landlord's counsel opposed the adjournment and stated that the tenant's application which was served on the landlord does not apply for an order cancelling a notice to end tenancy, but does apply for more time to make an application for an order cancelling a notice to end tenancy.

In the circumstances, the landlord has applied for an Order of Possession and I find that the landlord would be prejudiced by an adjournment. However, the tenant's application, as agreed by the parties is scheduled to be heard in 4 days, and since that application contains an application for more time to apply to cancel a notice to end the tenancy, the tenant might be prejudiced if an adjournment is not granted.

I ordered that the hearing proceed only on the portion of the landlord's application dealing with a notice to end tenancy for unpaid rent. The balance of the landlord's application is hereby adjourned to February 28, 2011 to be heard with the tenant's application for dispute resolution.

During the course of the hearing, the landlord's counsel withdrew the claim for ending the tenancy early and obtaining an Order of Possession. The landlord applies for an

Order of Possession for unpaid rent or utilities pursuant to Section 55 of the *Residential Tenancy Act*, and not for an order pursuant to Section 56.

The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain a part or all of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on November 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month.

The landlord testified that the security deposit was \$650.00 but the tenant paid \$400.00 in 2 instalments, the last of which was paid in early January, 2011. No move-in condition inspection report was completed by the landlord.

The landlord further testified that the tenant personally served the landlord with his notice on January 3, 2011 to vacate the rental unit effective February 28, 2011. He further testified that the tenant is in arrears of rent \$526.94 for the month of January, 2011 and \$1,300.00 for the month of February, 2011. In addition the tenant owes hydro to the landlord.

On February 2, 2011 the landlord had a process server serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated February 2, 2011 and states that the tenant failed to pay rent in the amount of \$1,300.00 that was due on February 1, 2011 and contains an expected date of vacancy of February 16, 2011. An Affidavit of Personal Service was also provided which states that the tenant was served by posting it to the door of the rental unit. The tenant has not paid the outstanding rent.

The tenant's agent testified that she told the landlord that if he served the tenant with a notice to end the tenancy, the tenant could take the form to the Ministry and the landlord would have been paid the rent, but the landlord told her that it didn't make any sense. She stated that he told her he called the Ministry and they told him he didn't need it.

She further testified that she needs to move out; the landlord has entered the rental unit contrary to the *Act*, and she confirmed that the landlord was served with the tenant's notice to end the tenancy effective February 28, 2011.

Analysis

In the circumstances, I cannot accept a settlement by the agent of the tenant. I do find, however that the tenant has applied for more time to make an application to dispute the landlord's notice, and I am satisfied that the tenant provided the landlord with a notice to vacate the rental unit by February 28, 2011. I therefore find it reasonable in the circumstances that the landlord have an Order of Possession effective February 28, 2011, and I so order.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective February 28, 2011 at 1:00 p.m.

I further order that the landlord comply with the *Residential Tenancy Act*, and with Section 29 in particular, by not entering the rental unit for any purpose unless one of the paragraphs of that section apply.

The balance of the landlord's application is hereby adjourned to be heard with the tenant's application which is scheduled to be heard on February 28, 2011 at 2:00 p.m.

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: February 24, 2011.

Residential Tenancy Branch