

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and her assistant and by the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in October 2009 for a monthly rent of \$550.00 due on the 1st of each month plus 1/3 of the utilities and that a security deposit was paid. The parties agreed the tenant originally paid a security deposit of \$275.00 and later the landlord requested and the tenant agreed to pay an additional \$275.00.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 10, 2011 stating that the tenant had failed to pay rent in the amount of \$2,750.00 due on the 1st or 10th of September 2011 and failed to pay utilities in the amount of \$300.00 following a written demand for it on the 29th of an unnamed month in the year 11 2010.

Despite the landlord's assertion on the Application for Dispute Resolution that the tenant was served with the 10 Day Notice to End Tenancy on January 10, 2011 by hand the parties agreed the landlord **did not** serve the tenant with the 10 Day Notice at all. The landlord testified that she tried to give it to the tenant's employer but that he would not accept it.

The tenant acknowledges that she has failed to pay rent for the months of September, October, November and December of 2010 and January, February, and March of 2011. The parties agreed, also, that as of December the landlord has blocked the tenant's access to the rental unit. The tenant testified that she has had to stay with friends and relatives but that all of her belongings are in the rental unit.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if the tenant has failed to pay rent when it is due by giving the tenant a notice to end the tenancy effective not earlier than 10 days after the date the tenant receives the notice and that it must be served in accordance with Section 88 of the *Act*.

As the landlord failed to serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent, I find the landlord has failed to serve the tenant with a notice to end tenancy in accordance with the *Act*.

The landlord failed to provide any documentation regarding the amount owed by the tenant for utilities. As per the parties agreement that the tenant was responsible for 1/3 of the utilities, the landlord has failed to provide copies of utility bills that substantiate that the utilities charged to the address require the tenant to pay \$50.00 per month.

In addition, the landlord has failed to provide a copy of the demand letter required under Section 46 to end a tenancy for unpaid utilities. And finally, as it is unclear in the 10 Day Notice to End Tenancy when this demand letter was issued, I find the landlord has failed to establish the utility costs as grounds to entitle the landlord to a monetary order for any amount for utilities.

Despite the fact that the tenant agrees that she has failed to pay the rent for the entire period that the landlord is claiming for, I find that the tenant was deprived the use of the rental unit for the full months of January and February 2011 and for a portion of December 2010 and a portion of March 2011. As such, I find the landlord is entitled to rent for the full period less 2 ½ months that the landlord prevented the tenant from accessing the unit.

I also find that as the landlord charged the tenant with \$275.00 more than the allowable security deposit under Section 19 the amount owed by the tenant for outstanding rent is reduced by this amount.

As the landlord had no legal authority to block the tenant from the use of the rental unit and as I have found the landlord failed to serve the tenant with a notice to end the tenancy in accordance with the *Act*, I order the landlord to provide the tenant with immediate access to the rental unit, until such time as the tenancy may end in accordance with the *Act*.

Conclusion

I find that the tenant is entitled to an Order of Possession effective **immediately after service on the landlord**. This order must be served on the landlord and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,200.00** comprised of rent owed. As the landlord was only partially successful in their application I dismiss the landlord's application to recover the \$50.00 fee paid for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$275.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,925.00**. This order must be served on the tenant 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: March 08, 2011.

Residential Tenancy Branch