



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced October 1, 2010 and the tenant is required to pay rent of \$830.00 on the 1st day of every month. The tenancy agreement provides for payment of a \$25.00 late fee and \$25.00 charge for insufficient funds. The landlord and tenant had set up a pre-authorized payment for the monthly rent. The tenant did not have sufficient funds to pay the rent for March 2011 and on March 4, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates that the tenant owed rent of \$930.00 as of March 1, 2011 and an effective date of March 14, 2011. The tenant did not dispute the Notice, pay the outstanding rent or vacate the rental unit.

I also heard that the landlord attempted to withdraw rent for April 2011 from the tenant's bank account which was also declined for insufficient funds and resulted in a \$40.00 NSF charge to the tenant by his bank. The tenant paid the landlord \$1,200.00 the day before this hearing.

During the hearing the tenant stated he was prepared to vacate the rental unit at the end of April 2011. The landlord advised that she has been instructed to request an Order of Possession effective as soon as possible.

The landlord indicated that the tenant still owes the landlord \$610.00 calculated as follows:

Unpaid rent – March 2011	\$ 830.00
Late fee/NSF fees for March 2011	50.00
Unpaid rent – April 2011	830.00
Late fee/NSF fees for April 2011	50.00
Filing fee for this application	50.00
Less: partial payment	<u>(1,200.00)</u>
Total	\$ 610.00

Provided as documentary evidence was a copy of the Notice to End Tenancy and the tenancy agreement. Upon review of the Notice to End Tenancy I cautioned the landlord that late fees and NSF charges are not “rent” as defined by the Act and should not appear as rent on a 10 Day Notice to End Tenancy.

Analysis

In order to end a tenancy for unpaid rent, the landlord must issue a Notice to End Tenancy that complies with the requirements of the Act. Where a tenant receives a 10 Day Notice to End Tenancy the tenant has five days to dispute the Notice or pay the outstanding rent and an error on the Notice does not necessarily invalidate the Notice. Since the Notice was posted to the tenant’s door on March 4, 2011 it is deemed to be received by the tenant on March 7, 2011.

If a tenant does not dispute a 10 Day Notice or pay the outstanding rent within five days of receiving the Notice, the Act provides that the tenancy comes to an end and the tenant must vacate the rental unit 10 days after receiving the Notice. In this case, the tenant did not vacate the unit and did not pay the outstanding rent meaning the tenancy may have come to an end on March 17, 2011. However, the landlord attempted to withdraw rent for April 2011 and even sought to recover an NSF charge and late fee for April 2011 which is inconsistent with a tenancy that has ended in March 2011.

Since the tenant stated that he was prepared to vacate the rental unit at the end of April 30, 2011 I do order that this tenancy shall end and I grant the landlord an Order of Possession effective at 1:00 p.m. on April 30, 2011.

Since the tenant remained in the rental unit and has the benefit of the tenancy continuing to April 30, 2011 I grant the landlord's request to recover \$610.00 from the tenant. I provide the landlord a Monetary Order in the amount of \$610.00.

Should the tenant pay the landlord \$610.00 before the end of the tenancy the security deposit shall be held in trust for the tenant to be administered in accordance with the Act. If the tenant does not pay the amount owed to the landlord the landlord is authorized to retain the security deposit in partial satisfaction of the amount owed and may enforce the remaining balance in Provincial Court (Small Claims) as necessary.

Conclusion

I have ordered that this tenancy shall end effective April 30, 2011 at 1:00 p.m. The landlord has been provided an Order of Possession and a Monetary Order in the amount of \$610.00 to serve upon the tenant and enforce in court as necessary.

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: April 05, 2011.

Residential Tenancy Branch