



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes: MNR, MNDC, OPR, MNSD, 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 March 16, 2011 and a monetary order for rent owed. Although served with the Application for Dispute Resolution and Notice of Hearing in person and by registered mail sent on April 2, 2011, the tenant did not appear.

Issue(s) to be Decided

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

Whether or not the landlord is entitled to compensation for rental arrears.

Background and Evidence

The landlord testified that the tenancy began on April 1, 2010, with rent of \$1,800.00 per month and no security deposit was paid. The landlord testified that the tenant failed to pay \$1,500.00 rent for the month of July 2010 and \$1,800.00 for August, 2010, September, 2010, October, 2010, November, 2010, December, 2010, January, 2011, February 2011, March, 2011, and April, 2011 amounting to a total of \$1,770.00. A copy of the 10-Day Notice to End Tenancy dated March 16, 2011, the resident ledger and some utility bills were in evidence.

The landlord testified utilities were owed to the landlord under a term in the tenancy agreement but no copy of the agreement was submitted into evidence. The landlord testified that the tenant has not moved and requested an Order of Possession.

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 has not paid the outstanding rent,

did not apply to dispute the Notice and did not vacate the unit. The tenant is therefore conclusively presumed under section 46(5) of the Act to have 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 has established that rental arrears are owed in the amount of \$1,770.00.

With respect to the portion of the claim relating to utilities, the Ten-Day Notice form dated March 16, 2011 indicated that a written demand for \$2,422.74 in utilities was made by the landlord on April 7, 2010. I draw attention to section 46 (6) of the Act which states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

However, for this hearing, there was no written tenancy agreement submitted into evidence to confirm that the parties had ever agreed upon a term in which the tenant would reimburse the landlord for utility costs. Without a written tenancy agreement in evidence, I find that the portion of the landlord's claim relating to utilities must be dismissed.

I find that the landlord is entitled to a monetary order for \$17,800.00 comprised of \$17,700.00 accrued rental arrears and the \$100.00 fee paid for this application.

Conclusion

I hereby 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.

I hereby grant the Landlord an order under section 67 for \$17,800.00. 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: April 2011.

Residential Tenancy Branch