



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, 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 June 8, 2011, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

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 monetary compensation for rental arrears owed and loss of rent

Background and Evidence

The landlord testified that he tenancy started on May 30, 2011 with rent set at \$1,200.00 per month. The landlord testified that the tenant paid one day's rent for May and \$500.00 toward the security deposit. The tenant also gave the landlord a cheque for rent for June. The landlord testified that, after the cheque failed to clear, a Ten Day Notice to End Tenancy for Unpaid Rent was issued on June 8, 2011. The landlord testified that the tenant failed to satisfy the arrears within the five-day deadline, so an application for dispute resolution was filed seeking an order of possession based on the Notice. The landlord testified that the tenant also failed to pay rent for June and a second Ten Day Notice to End Tenancy for Unpaid Rent dated June 2, 2011 was served with an amended amount of the debt, showing \$2,627. 00 now owed. Based on the two Notices, the landlord has requested an Order of Possession and a monetary order.

The tenant did not dispute that they failed to pay rent on June 1, 2011 due to a banking problem. The tenant confirmed receipt of the Ten Day Notice to End Tenancy for

Unpaid Rent dated June 8, 2011 and acknowledged that the tenant did not pay all of the arrears within 5 days after receiving the Notice. The tenant testified that they were told by a person who gave them advice, not to pay the rental arrears before the upcoming dispute resolution hearing. The tenant gave explanations as to why the rent was not paid.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. .

Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. I find that the tenant's testimony explaining why the rent was not paid to be irrelevant to this dispute.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I find that the tenant did neither.

The Ten-day Notice also included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading "Important Facts" the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*". Whether or not the tenant had advice from anyone to refrain from paying the arrears until the dispute resolution hearing, the tenant did not obtain an Order stating that the rent did not have to be paid.

In this instance I find that the tenant was in arrears at the time the Notice was served on June 8, 2011 and the tenant did not pay the arrears within 5 days. In fact, the tenant failed to pay rent for the following month as well.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Given the above, 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 facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$2,650. 00 comprised of \$1,300.00 rent owed for June, \$1,300.00 rent owed for July 2011 and 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 \$2,150.00.

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 \$2,150.00. 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: July 08, 2011.

Residential Tenancy Branch