



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This application was brought by the landlord seeking an Order of Possession and a monetary order based on a 10-day Notice to End Tenancy for Unpaid Rent dated June 8, 2011 served in person on June 8, 2011.

The landlord applicant appeared. Despite being served in person on June 22, 2011, the tenant did not appear and the hearing proceeded in the respondent's absence.

At the outset of the hearing the landlord advised that the tenant had been issued with a Two Month Notice to End Tenancy for Landlord's Use on May 1, 2011. The landlord testified that the tenant did pay the rental arrears for June on June 22, 2011 and was issued a receipt for "use and occupancy only". The landlord is seeking an order of possession.

Issue(s) to be Decided

The landlord was seeking an Order of Possession and the issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Background and Evidence

The tenancy began in October 2009 and current rent is \$400.00. A deposit of \$175.00 was paid. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated June 8, 2011 with effective date of June 19, 2011, and a copy of the tenancy agreement.

The landlord testified that the tenant failed to pay \$820.00 in accrued rental arrears and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant subsequently paid the arrears. However, the landlord is still seeking an order of possession and the cost of filing the application.

The landlord was also concerned about utilities now in arrears, that were not included on the Ten Day Notice to End Tenancy for Unpaid Rent .

Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

In this instance, the tenant had fallen into arrears by failing to pay the rent when it was due. Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, the Act provides that, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution 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.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and although the tenant paid the arrears on June 22, 2011, this was after the 5-day deadline to cancel the Notice, and the tenant also did not dispute the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act. However, as the tenant had paid the rent in full for the month of June 2011, the arrears have been satisfied.

In addition to the above, because a Two Month Notice to End Tenancy for Landlord's Use was already issued on May 1, 2011, (deemed under the Act to be effective on July 31, 2011, I find that the tenant is entitled to also be credited the equivalent of one month rent pursuant to section 51 of the Act which states:

- (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord. (my emphasis)

For this reason I set the date for the termination of this tenancy at July 31, 2011 and find that the tenant has now received full compensation pursuant to section 51 of the Act in relation to the previously served Two Month Notice to End Tenancy for Landlord's Use.

With respect to the landlord's concern about utilities now in arrears, that were not included on the Ten Day Notice to End Tenancy for Unpaid Rent, I find I am not able to determine this matter as it occurred *after* the landlord made the application and was not part of the application. However, the landlord is at liberty to make a subsequent application if she chooses to do so.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective immediately. 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 order that the landlord is entitled to retain \$50.00 from the tenant's \$175.00 security deposit for the cost of this application leaving \$125.00 remaining, which must be refunded in accordance with section 38 of the Act.

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 15, 2011.

Residential Tenancy Branch