



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note the Tenant had to be cautioned for inappropriate language and behavior during the hearing. The Tenant also made a veiled threat against the Landlord, however, he apologized for this during the hearing.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord testified he served the Tenant with a Notice to End Tenancy for non-payment of rent on July 4, 2011. The effective date of the Notice was July 15, 2011.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant had not paid rent of \$300.00 in June, or and owed \$600.00 in rent for each of July and August.

The Tenant testified he wanted to dispute the Notice and that he had faxed in evidence. He testified that the Landlord cut off his cable and he did not have a tenancy agreement to sign until two weeks after he moved in.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

There is no evidence that the Tenant filed an Application to dispute the Notice. The records of the branch do not show that the Tenant sent any evidence in.

Under section 26 of the Act, the Tenant is not allowed to withhold rent, even if the Landlord is in breach of the Act or the tenancy agreement.

If the Tenant was not satisfied with the tenancy agreement or the actions of the Landlord, he should have filed an Application to compel the Landlord to comply with the Act or the tenancy agreement, or to dispute the Notice.

I find the Tenant has not paid the outstanding rent and did not apply to dispute the Notice and 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.

I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. August 31, 2011**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$1,550.00 comprised of \$300.00 in rent for June, and \$600.00 for each of July and August, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$300.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,250.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: August 30, 2011.

Residential Tenancy Branch