

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession based on the Notice?
- Is the landlord entitled to compensation for rent still outstanding?

Issues to be decided: Tenant's Application

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on July 1, 2010. Rent was set at \$667.00 per month payable on the 1st day of each month and a security deposit of \$375.00 was paid on June 11, 2010.

Evidence submitted included a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated August 11, 2011, a copy of the tenancy agreement, written testimony and copies of communications.

The landlord testified that, when the tenant failed to pay the rent due on August 1, 2011, a Ten-Day Notice to End Tenancy for Unpaid Rent was issued and served on August 11, 2011, to end the tenancy effective August 21, 2011. The landlord testified that the tenant did not pay the arrears within the five-day deadline after receiving the Notice. The landlord testified that the tenant also failed to pay \$667.00 rent due on September 1, 2011. The landlord is seeking a monetary order for \$1,334.00 arrears and an order of possession.

The tenant's testimony confirmed that the tenant did not pay the rent for August 2011 when it was due. The tenant stated that there was a mix-up with the bank in regard to the cheque they had issued to the landlord. The tenant testified that that they intended to pay the rent with a money order, but first wanted to straighten out the problems with their bank. The tenant stated that they did not pay the August arrears and rent for September as they were awaiting the outcome of the hearing. The tenant is requesting that the Ten-Day Notice be cancelled.

Analysis:

In regard to the rental arrears, I find that 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. Therefore, I find the tenant's testimony regarding problems with the unit to be irrelevant to the matter under dispute.

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent or utilities are in arrears. The determination to be made is whether the Notice was supported under the Act. If so, the landlord's application is for the notice to be enforced with an Order of Possession and a Monetary Order. If not, the tenant is requesting that the Notice be cancelled.

I find that there is no dispute of the fact that the tenant owed arrears for one month rent that was due on August 1, 2011 and remains unpaid. Payment of the rental arrears within five days of receiving the Notice would have served to automatically cancel the

Notice. However, in this instance the debt was not paid and in fact, the tenant failed to pay rent owed for September due on September 1, 2011.

Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to total monetary compensation of \$1,384.00 comprised of \$667.00 rental arrears for August, \$667.00 rental arrears for September 2011 and the \$50.00 cost of the application. I order that the landlord retain the security deposit of \$375.00 leaving a balance owed to the landlord of \$1,009.00.

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. This decision and order is final and binding and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue a monetary order in favour of the landlord for \$1009.00 which must be served on the tenant. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The tenant's application is dismissed in its entirety, without leave to reapply.

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: September 08, 2011.

Residential Tenancy Branch