



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, , FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated August 3, 2011 and an Order of Possession.

Both the Landlord and the tenant appeared and gave testimony.

Preliminary Matter: Service of Respondent's Evidence

The tenant had submitted documentary evidence on file to defend against the landlord's application. However, the landlord testified that this evidence was never received by the landlord. The tenant stated that she had faxed the evidence to the Residential Tenancy Branch.

The Residential Tenancy Rules of Procedure, Rule 4 states that copies of evidence the respondent intends to rely upon at the dispute resolution proceeding must be received by the Residential Tenancy Branch and **served on the applicant** as soon as possible **and at least five (5) days before the dispute resolution proceeding** but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the Dispute Resolution Officer must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. The other party must be given an opportunity to review the unseen evidence **before** the application can be heard. This would necessitate a determination about whether or not the matter should be adjourned to a future date to allow service of the evidence.

I note that the **Landlord and Tenant Fact Sheet** contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent*

and/or written notice of evidence must be served on each other and received by RTB as soon as possible..”

Given the above, I declined to accept or consider any evidence that was not properly served on the other party and declined to adjourn the hearing to permit service of the evidence as I found that a delay due to the tenant's failure to follow the Residential Tenancy Rules of Procedure would unfairly prejudice the applicant. However, verbal testimony from both parties was considered.

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.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated August 3, 2011. The landlord testified that the tenant did not pay the full rent for July and August and accrued arrears of \$660.00 during that period. The landlord testified that the tenant did not pay the \$660.00 rent for September 2011 and the total arrears are now \$1,320.00. The landlord is seeking a monetary order for this amount and an Order of Possession.

The tenant disputed the landlord's testimony that the rent was not paid and stated that the landlord was not telling the truth. The tenant stated that she paid her portion of the rent for July and August and has a receipt for the payment. This receipt was not in evidence. The tenant acknowledged that she did not file an application for dispute resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent . The tenant stated that her roommate was responsible for any shortage of rent and felt that she should not be held accountable. The tenant testified that the landlord is not entitled under the Act to end the tenancy, nor to receive a monetary order for the amount being claimed.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. 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 this Act, the regulations or the tenancy agreement.

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 either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that the tenant did neither.

The Ten-day Notice includes written instructions on page 2 informing the tenant 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*".

In this instance I find that the tenant was in arrears at the time the Notice was served on August 3, 2011 and the tenant did not pay all of the arrears and in fact also failed to pay rent for September 2011.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rent nor 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, which in this case was August 13, 2011, and must vacate the rental unit to which the notice relates by that date.

I find that the tenant has not paid the outstanding rent and did not apply to dispute the Notice. Given the above, I find that the landlord is entitled to an Order of Possession.

With respect to the rental arrears, I find that the tenant fell into arrears and by August 3, 2011, the rent owed was \$660.00. By September 1, 2011, the arrears totalled \$1,320.00.

The fact that the tenant's roommate failed to pay his share of the rent, is not a factor that will excuse the arrears. In this situation, it appears that the landlord did not have a tenancy agreement that included the tenant's roommate as a co-tenant.

However, even if the other occupant of the unit was included as an equal co-tenant in the tenancy agreement with the landlord, I find that, according to section 13 of the Residential Tenancy Guidelines, co-tenants, are still both responsible for meeting all the terms of the tenancy agreement and are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, arrears or other debt from all the tenants, or either one of the tenants.

I find that, whether or not the individual sharing the rental unit was an equal co-tenant or merely the respondent's roommate, this is not a factor that would in any way limit the

liability of this tenant for the total outstanding rent owed because each one of the co-tenants is individually bound by the entire amount of the debt for rental arrears or damages, and the landlord is at liberty to name either one, or both, in a dispute resolution application.

Accordingly, I find that the landlord has established a total monetary claim of \$1,370.00 comprised of \$660.00 rental arrears for July and August, \$660.00 arrears for September and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$325.00 in partial satisfaction of the claim leaving a balance due of \$1,045.00 remaining debt to the landlord.

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, if necessary, may be filed in the Supreme Court and enforced as an order of that Court.

I grant the Landlord an order under section 67 for \$1,045.00. This order must be served on the Respondent and, if necessary, may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding and 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 14, 2011.

Residential Tenancy Branch