



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 seeking an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated September 9, 2011, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord also applied for compensation for the unpaid pet damage deposit and compensation for garbage disposal and repairs to the unit.

Both the tenant and the landlord attended and each gave affirmed testimony in turn.

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

Whether or not the landlord is entitled to be compensated for damages and the tenant's failure to pay the pet damage deposit

Background and Evidence

The tenancy began on August 1, 2011 with rent set at \$995.00 and a security deposit of \$497.50 was paid.

The landlord testified that, on September 1, 2011 when the rent was due, the tenant failed to pay the \$995.00 rent and a Notice to End Tenancy was issued on September 9, 2011. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated September 9, 2011.

The landlord testified that the tenant has since paid \$500.00 towards the arrears, but the remaining \$495.00 is still outstanding and the tenant has not yet paid \$995.00 now owed for the month of October 2011. The landlord testified that the tenant did not pay the pet damage deposit and the landlord is seeking compensation for this and for damages and junk removal.

The landlord is seeking a Monetary Order and an Order of Possession.

The tenant acknowledged that the rent was in arrears, but testified that he had recently paid \$500.00 to the landlord towards the debt, and is ready to pay the remainder. The tenant testified that there were various problems that had affected his tenancy and his ability to pay the rent. The tenant testified that these issues have now been resolved and he hopes to re-instate the tenancy.

Analysis

Based on the testimony of both parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of 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. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the defence put forward by the tenant with respect to the circumstances that affected his ability to pay the rent, whether true or not, are not material considerations in the matter before me. 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 the Act, the regulations or the tenancy agreement. The reasons for the tenant's failure to do so would not be relevant to the issue of whether or not the landlord's Ten Day Notice to End Tenancy for Unpaid Rent was valid and warranted.

With respect to the portion of the landlord's application seeking other damages for repairs and junk removal, I find the claim to be premature and that it must be dismissed. With respect to the tenant's failure to pay a pet damage deposit, I find this matter is now moot, being that the landlord is ending the tenancy.

Based on the evidence and testimony, I find that the landlord has established a total monetary claim of \$1,540.00 comprised of \$495.00 rent still owed for September 2011, \$995.00 rent owed for October 2011 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$497.50 in partial satisfaction of the claim, leaving a balance due of \$1,042.50.

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 a monetary order under section 67 for \$1,042.50. 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.

The remainder of the landlord's application is dismissed with 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: October 27, 2011.

Residential Tenancy Branch