



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 3, 2012 and, a monetary order for rent owed and late fees

Both parties appeared and gave testimony during the conference call.

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 and loss of rent

Background and Evidence

The landlord testified that the tenancy started on September 1, 2010 with current rent of \$1,204.00 per month and a security deposit of \$565.00 was paid. The landlord testified that the tenant failed to pay rent for the month of January 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued on January 3, 2012 and served on the tenant by posting it on the tenant's door. The landlord testified that the tenant failed to satisfy the arrears within the five-day deadline, so an application for dispute resolution was filed seeking an order of possession based on the Notice. The landlord testified that the tenant also failed to pay \$1,204.00 rent for February 2012. In addition to the above, the landlord is claiming \$40.00 for two late fees pursuant to the tenancy agreement. Based on the Notices, the landlord has requested compensation of \$2,448.00 plus the \$50.00 cost of filing the application.

The tenant did not dispute that the rent owed was not paid on January 1, 2012 or thereafter and that rental arrears are still owed for February as well. The tenant disputed that he had ever received any Ten Day Notice to End Tenancy for Unpaid Rent.

Analysis

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. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. The reason rent was not paid is not relevant to this dispute.

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 pay the overdue rent, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I find that the tenant did neither.

I find that the Ten-day Notice also included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted. In this instance I find that the tenant was in arrears at the time the Notice was served on January 3, 2012 and the tenant did not pay the arrears within 5 days. In fact, although the landlord's application was made on January 24, 2012, showing all details of the claim, including a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, the tenant continued to default on rent owed for the following month of February as well.

In any case, section 46(5) of the Act provides that, if a tenant does not pay the rent or 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, and must vacate the rental unit to which the notice relates by that date.

Given the above, the tenant 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 facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$2,498.00 comprised of \$2,408.00 rental arrears, \$40.00 late fees for January and February 2012 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$565.00 in partial satisfaction of the claim leaving a balance due of \$1,933.00.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective five 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 an order under section 67 for \$1,933.00. 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.

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: February 13, 2012.

Residential Tenancy Branch