



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, OPR, MNSD, 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 December 20, 2011 a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

The landlord and one of the co-tenants appeared at the hearing and gave evidence.

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 submitted into evidence a copy of the 10-Day Notice to End Tenancy dated December 20, 2011 with effective date of January 1, 2012, a copy of the tenancy agreement and copies of communications. The landlord testified that the tenancy began on November 1, 2011, with rent of \$1,020.00, at which time the tenant paid a security deposit of \$510.00. The landlord testified that the tenant failed to pay \$890.00 rent for December and accrued further arrears for January and February 2012 totaling \$2,930.00 which is being claimed. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

The tenant stated that he does not agree with the amount being claimed by the landlord and is disputing the application. The tenant acknowledged that there were arrears in the rent, but pointed out that he had paid his share of the rent for December and should only be held accountable for his proportionate share of the debt. The tenant testified that he was not aware that his co-tenant had defaulted on the co-tenant's contribution of

the rent for December. The tenant testified that he was also not aware that the landlord had served a Ten Day Notice to End Tenancy for Unpaid Rent until he came back for Christmas.

The tenant testified that, once he discovered that Notice had been given for rent owed, he then repeatedly attempted to reach the landlord by telephone to discuss the situation, but did not reach the landlord. The tenant stated that, with respect to the months of January and February, he was still willing to pay his share of rent owed. However, he did not make partial payments as he wanted the funds to be allocated for arrears that he felt were his co-tenant's responsibility. The tenant testified that the landlord had knowingly accepted his co-tenant for this tenancy despite the fact that, unbeknownst to the applicant tenant, the co-tenant had already defaulted on rent in another unit in the past and, in fact, still owed back payments to the landlord. The tenant indicated that he was hopeful of reaching a compromise with the landlord about the amount being claimed against him.

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.

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.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the arrears 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.

The fact that the tenant's roommate failed to pay his share of the rent, is not a factor that will excuse or limit any portion of the arrears. In this situation, 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 both the tenants, or either one of the tenants.

Under the Act and agreement, each co-tenant is individually bound by the entire amount of the debt for rental arrears or damages, and the landlord is at liberty to seek compensation from either one of the tenants, or both, in a dispute resolution application.

Given the above, I find that the landlord has established a total monetary claim of \$2,980.00 comprised of \$2,930.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$510.00 in partial satisfaction of the claim leaving a balance due of \$2,470.00.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective February 29, 2012. This order must be served on the Respondent and is final and binding. If necessary it 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 \$2,470.00. This order must be served on the Respondent and is final and binding. If necessary it 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 21, 2012.

Residential Tenancy Branch