



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a notice to end tenancy.

The landlord's application is seeking orders as follows:

1. An order of possession for unpaid rent;
2. A monetary order for unpaid rent; and
3. To keep all or part of the security deposit.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

The tenant acknowledged he received the ten day notice to end tenancy on April 2, 2012, under the provisions of the Act the tenant had five days to file an application for dispute resolution. The tenant's application was filed on April 10, 2012, requesting to allow more time to make an application to cancel a notice to end tenancy.

Under section 66(1) of the Residential Tenancy Act, and extension of time can only be granted where the applicant has established that there are exception circumstances.

In this case the tenant stated he was not able to get transportation until April 10, 2012. I find the tenant did not take reasonable and appropriate steps to comply with the relevant time limit, and the tenant has failed to prove that an exceptional circumstance, such as a medical emergency, prevented him from filing his application. Therefore, I dismiss the tenant's application to allow a tenant more time to make an application to cancel a notice to end tenancy.

Further, I find that there is no merit to the tenant's application. In particular, the tenant admitted that rent was owed when he received the notice and that amount was not paid within the five days required by the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of landlord's agent, I find that the tenant was served with a notice to end tenancy for non-payment of rent on April 2, 2012, which the tenant acknowledged he received on April 2, 2012. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice within the five days 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.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$1,850.00 comprised of rent owed for March 2012, April 2012 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,400.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy within the required time. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: April 30, 2012.

Residential Tenancy Branch