



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for an order setting aside the landlord's 10 Day Notice to End Tenancy dated May 7, 2012. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on March 15, 2010. The rent is \$1,500.00 due in advance on the first day of each month. A security deposit of \$750.00 was paid at the start of the tenancy. On May 7, 2012 the tenant was personally served with a Notice to End Tenancy for non-payment of rent. The tenant did not pay the outstanding rent within five days of receiving the Notice but did file an application disputing the Notice on May 11, 2012.

The landlord claims that the current amount of rent outstanding is \$2,930.00 comprised of \$1,430.00 for May and \$1,500.00 for June. The tenant does not dispute the amount of arrears as stated by the landlord.

The tenant did state at the hearing that the reason she disputed the landlord's Notice was due to the construction project the landlord had undertaken in the adjacent unit. The tenant testified that she and her teenage daughter got sick from the amount of dust and debris coming from the work site.

Analysis

Notice to End Tenancy/Order of Possession - Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the

notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. In the present case the tenant did in fact dispute the Notice but acknowledged that the rent had not been paid. As a result, there is no basis upon which I can set aside this Notice to End Tenancy. I realize the tenant was very unhappy about the construction next door but I cannot cancel a 10 Day Notice for this reason. Accordingly, I dismiss the tenant's application for an order setting aside the Notice to End Tenancy and grant the landlord an order of possession effective two days from the date of service.

Monetary Order – The landlord has claimed unpaid rent in the total amount of \$2,930.00. The tenant has not disputed that this is the amount of rent owing. The Act and the tenancy agreement require that the tenant pay the rent when it is due. I am therefore satisfied that the landlord has established this claim.

Conclusion

I find that the landlord is entitled to an order for 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 \$2,980.00 comprised of unpaid rent for May and June and the \$50.00 fee paid by the landlord for this application. I therefore order that the landlord retain the deposit and interest (\$0.00) of \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,230.00.

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*.