



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNDC, 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 MAY 1, 2012 and a monetary order for rent owed.

Both parties 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:

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to monetary compensation for rental arrears owed?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated May 1, 2012 with effective date of May 14, 2012.

The landlord testified that the tenancy began in April 2012 and that no security deposit was ever paid. The landlord testified that the tenant failed to pay \$700.00 of the \$1,125.00 rent properly due on May 1, 2012 and the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent the same day and served it on the tenant.

The landlord testified that the tenant then also failed to pay \$1,125.00 rent owed for the month of June 2012. The landlord is now claiming \$1,825.00 compensation for arrears. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. The Notice was signed on May 1, 2012, and was issued for unpaid rent due on May 1, 2012.

In this instance, I find that the Notice had erroneously indicated that the tenant was in rental arrears on May 1, 2012 when, in fact, the tenant was not yet in arrears at the time the notice was signed. I find that the tenant would have been, and was, in arrears on May 2, 2012.

In regard to the date the Notice was signed by the landlord, neither the Act nor the Residential Tenancy Rules of Procedure grant a dispute resolution officer any authority to retro-actively correct or alter the date that the Notice was issued.

Therefore, I find that, although the tenant did owe rent for May 2012 on May 1, 2012 and thereafter, the Notice dated May 1, 2012 is not enforceable and due to the fact it was issued prematurely. I find that the tenancy cannot be ended based on this flawed Notice. The Notice must therefore be cancelled.

However, based on the evidence provided during these proceedings, I find that the tenant is currently in arrears for rent and now owes the landlord \$1,825.00 for accrued rental arrears for rent due in May and June 2012. Accordingly, I find that the landlord is entitled to a monetary order for \$1,875.00 comprised of the \$1,825.00 rental arrears and the \$50.00 cost of this application.

The remainder of the landlord's application must be dismissed.

Conclusion

I hereby dismiss the portion of the landlord's application seeking an Order of Possession based on the Ten Day Notice to for Unpaid Rent dated May 1, 2012.

I hereby grant the Landlord an order under section 67 for \$1,875.00. 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: June 06, 2012.

Residential Tenancy Branch