



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 2, 2012, a monetary order for rent owed and for loss of rent and an order to retain the security deposit in partial satisfaction of the claim.

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 June 15, 2012 with rent set at \$825.00 per month and a security deposit of \$407.00 was paid

The landlord testified that the tenant failed to pay \$825.00 rent for the month of July 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued on July 2, 2012 and served on the tenant. The landlord testified that the tenant paid \$200.00 of the arrears, but failed to pay the remaining \$625.00 owed within the five-day deadline granted under the Act. The landlord testified that it is likely that there will be a loss of rent for the month of August as well.

The landlord testified that an application for dispute resolution was filed seeking an order of possession based on the Notice. The landlord requested a monetary order for \$625.00 for rental arrears for July and \$825.00 for loss of rent for August and an Order of Possession.

The tenant did not dispute that all of the rent owed was not paid for July and that arrears are still owed. The tenant stated that he had never received a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant also gave testimony about problems during the tenancy with the condition of the unit and the conduct of the landlord.

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.

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. I accept the landlord's testimony that he served the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on July 2, 2012.

The Act 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 fact, the Ten-day Notice 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 case I find that the tenant did neither.

I find that 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 shown on the notice, and must vacate the rental unit by that date.

Based on the above, I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$675.00 comprised of \$625.00 rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$407.00 in partial satisfaction of the claim leaving a balance due of \$268.00.

I find that the landlord's additional monetary claim for \$825.00 loss of rent for August is premature and must be dismissed, as these damages have not yet occurred. The landlord is at liberty to make an application in future seeking compensation for any losses and damages beyond the current rent owed.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two 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 \$268.00. 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: July 31, 2012.

Residential Tenancy Branch