



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, 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 June 20, 2012 and a monetary order for rental arrears. The landlord was also claiming future loss of rent for August in the amount of \$1,250.00 and \$250.00 for outstanding utilities .

Despite being served in person the respondent tenant did not appear.

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?

Is the landlord entitled to utility charges?

Is the landlord entitled to damages for loss of revenue for August?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated June 20, 2012 with effective date of June 30, 2012, copies of communications from the landlord and the tenant, a copy of an invoice for water consumption, an email addressed to the landlord from an accounting clerk from the municipality, a copy of a One Month Notice to End Tenancy for Cause dated June 20, 2012 and a copy of the tenancy agreement.

The landlord testified that the tenancy began on January 15, 2012 as a fixed term to run until January 15, 2013 with rent set at \$1,250.00 per month. The tenant paid a security deposit of \$625.00. The landlord testified that the tenant fell into arrears with rent, failing to pay \$450.00 owed for June 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was served to the tenant in person. The landlord testified that the tenant failed

to pay \$1,250.00 for July 2012, thereby accruing rental arrears of \$1,700.00, which is being claimed.

The landlord was also claiming a loss of rent for August 2012 in the amount of \$1,250.00. Although the loss has not yet occurred, the landlord stated that the unit has been advertised but could not be shown as the tenant has thwarted the landlord's efforts to bring prospective renters through the unit. No copy of any rental advertisements were submitted. However, the landlord's evidence included a copy of a 24-hour notice dated July 6, 2012 requesting access to show the unit on July 8, 2012.

In addition to the above, the landlord is requesting outstanding utilities owed in the amount of \$250.00. The landlord stated that the tenancy agreement does not include utilities in the rent and that the services were supposed to be put in the tenant's name. According to the landlord, the tenant did place the hydro in the tenant's name, but failed to pay for the hydro, which was disconnected. The landlord testified that the tenant has accrued water consumption costs from the municipality that will automatically be billed back to the landlord, through taxes, if left unpaid. The landlord's evidence included an email message, dated July 16, 2012, that was addressed to the landlord, from the municipality stating that an attached ledger featured the water consumption and service billing at that address, to May 12, 2012.

The total amount being claimed by the landlord for rental arrears, loss of rent and utilities is \$3,200.00. The landlord is also requesting reimbursement of the cost of filing the application.

The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

Analysis

In regard to the \$1,700.00 in rental arrears being claimed by the landlord, I find that 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 the landlord 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, 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.

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 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 clearly entitled to an Order of Possession. I also find that the landlord is entitled to rental arrears totalling \$1,700.00 for rent owed for June and July 2012.

With respect to the landlord's claim for future loss of rent for August 2012 in the amount of \$1,250.00 I find that this would be a claim in damages and a applicant's right to claim damages from another party is dealt with under section 7 of the Act. This section states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord's claim for loss of rent for the month of August 2012 does not satisfy elements 2, 3 or 4 of the test for damages because landlord failed to prove that a genuine loss had been incurred as of the date that the landlord made this claim in the application. Accordingly, I find that the claim of \$1,250.00 for loss of rent for August 2012 must be dismissed.

With respect to the landlord's claim for utilities, I find that section 46, (6) states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a Ten-Day Notice based on utilities owed.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated June 20, 2012 did not notify the tenant that any utility arrears were currently owed to the landlord or were being claimed at that time.

I find that this particular tenancy agreement contains a term at paragraph 6, in reference to the payment of utilities that states:

"Cost of utilities for premises rented shall be paid by the tenant except -----"

The words, "~~Heat~~" and "~~Hot Water~~" have been crossed out. No other details relating to the utilities are specified in the agreement. I find that the term relating to the tenant's responsibility for utility payments is vague because it neglects to instruct how the utilities are to be paid, whether to the landlord, or whether all of the utility accounts will be placed in the tenant's name. However, I do accept the landlord's undisputed verbal testimony that the hydro had to be put in the tenant's name and that this was done. Based on the landlord's testimony, I find that the tenant's failure to pay the hydro did not impact the landlord financially.

However, the landlord's claim pertains to the cost of water. In regard to the billing for water consumption at the property, I find that the invoice from the municipality that was in evidence, does not indicate who held the account, the landlord or the tenant, as no customer name is featured on the ledger. If the tenant was required to pay the landlord, then, pursuant to section 46(6), this fact would need to be specifically stated in the tenancy agreement and the landlord would then be required to give the tenant 30 days written notice for payment, before the charges could be considered as unpaid rent. Moreover, it would be necessary to include this overdue amount in the Ten Day Notice to End Tenancy for Unpaid Rent in the appropriate space identified for that purpose.

Although the landlord testified that a written demand for payment of the water bill was served on the tenant 30 days prior to the claim, I find that no evidence was submitted to verify that the tenant was ever given written notification that the landlord was demanding payment of the outstanding water utilities. The landlord also failed to provide sufficient documentary evidence to prove that the landlord had been, or would be, charged the outstanding amounts for water consumption and that the charges would be transferred to the landlord's property tax bill.

Given the above, I find that the landlord has not sufficiently proven that the landlord is entitled to the \$250.00 claimed for utility costs and I find that this portion of the landlord's claim must be dismissed.

I find that the landlord has established a total monetary claim of \$1,750.00, comprised of \$1,700.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$625.00 in partial satisfaction of the claim leaving a balance due of \$1,125.00.

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 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 \$1,125.00. 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.

The remainder of the landlord's monetary claim is dismissed without leave.

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 24, 2012.

Residential Tenancy Branch