



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 for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated July 2, 2012, a monetary order for rental arrears and utilities owed. Although served with the Application for Dispute Resolution in person on July 11, 2012, the 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 compensation for rental arrears?

Is the landlord entitled to compensation for utility arrears?

Background and Evidence

The landlord testified that the tenancy began on July 1, 2008 and the rent is \$600.00 per month, plus 40% of the utilities. A security deposit of \$300.00 was paid. The landlord testified that the tenant fell into arrears in the amount of \$593.40 for rent and failed to pay outstanding utilities of \$615.28. The landlord testified that a written demand had been issued for the utilities and evidence of this demand was submitted by fax the day before this hearing. A copy of the 10-Day Notice to End Tenancy and a copy of the tenancy agreement were in evidence.

The landlord testified that the tenant has not paid the outstanding rent or utilities, has not disputed the Notice and has not moved out. The landlord is requesting both a monetary order and an Order of Possession.

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 tenant has not paid the outstanding rent, did not apply to dispute the Notice and did not vacate the unit. The tenant 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 entitled to an Order of Possession.

With respect to the rental arrears owed, I find that the landlord is entitled to \$593.40.

With respect to the portion of the claim relating to utilities, I draw attention to section 46 (6) of the Act which 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, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The tenancy agreement does indicate that the tenant is required to pay 40% of the utilities. However, according to the landlord, a copy of the written demand for payment of utilities that was apparently sent 30 days prior to the Notice and a copy of the utility bill, were only submitted yesterday by fax. This evidence was not received at least in five days prior to the hearing as required under the Act and could not be considered. Therefore, I find that the portion of the claim relating to utilities must be dismissed.

I find that the landlord is entitled to total monetary compensation of \$643.40 comprised of \$593.40 rental arrears and the \$50.00 fee paid for this application. I order the landlord to retain the \$300.00 security deposit in partial satisfaction of the claim leaving a remainder of \$343.40 in favour of the landlord.

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 \$343.40. 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: August 01, 2012.

Residential Tenancy Branch