



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, CNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55.
- A monetary order for rent owed, pursuant to Section 67.
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46.
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issue to be decided

Is the landlord entitled to an order of possession for unpaid rent and compensation for rental arrears?

Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The current tenancy started on December 1, 2011 with rent set at \$1,400.00 per month payable on the 1st day of each month and a security deposit of \$600.00 was paid.

Evidence submitted included a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated July 20, 2012 indicating that the tenant had accrued rental arrears of \$5,600.00 rent. A copy of the tenancy agreement was in evidence.

The landlord testified that the tenant had given numerous cheques for rent that had not been honoured and were rejected for nonsufficient funds. The landlord submitted bank records showing that cheques had been returned.

The landlord testified that a Ten-Day Notice to End Tenancy was and served on the tenant and that no funds had been received since that time.. The landlord testified that the tenant did not pay the arrears within the five-day deadline and landlord is seeking both a monetary order for arrears and an order of possession.

The tenant's testimony confirmed that the tenant fell into rental arrears. No evidence was submitted by the tenant rent, but the tenant did not agree with the amount being claimed by the landlord. The tenant also testified that the parties had reached a payment agreement to catch up on all of the defaulted rent owed. The tenant is requesting that the Ten-Day Notice be cancelled and the tenancy be allowed to continue.

Analysis:

In regard to the rental arrears, 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.

I accept the testimony from both the tenant and the landlord that the tenant fell into arrears and still owed a sum of rent from the past and that the tenant failed to pay rent on July 1, 2012, and on August 1, 2012.

A landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act when rent is in arrears. The determination to be made is whether the Notice was supported under the Act. If so, the landlord's application for an Order of Possession and a Monetary Order will succeed. If not, the tenant's request that the Notice be cancelled will succeed.

I find that payment of the rental arrears in full within five days of receiving the Notice, would have automatically cancelled the Notice. For a Ten Day Notice to End Tenancy for Unpaid Rent received on July 20, 2012, the 5 day-deadline would expire on July 25, 2012 . In this instance the debt was not paid by the tenant at all.

Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed. Based on the testimony and

evidence of both parties, I find that the landlord is therefore entitled to an Order of Possession.

I find that the landlord is also entitled to total monetary compensation of \$7,050.00 comprised of proven rental arrears accrued in the amount of \$4,700.00, \$1,400.00 rent owed for July 2012, \$1,400.00 rent owed for August 2012 and the \$50.00 cost of filing this application. I order that the landlord retain the tenant's \$600.00 security deposit in partial satisfaction of the claim, leaving a remainder of \$6,450.00 still outstanding in favour of the landlord.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective August 31, 2012. This order must be served on the Respondent. This decision and order is final and binding and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue a monetary order in favour of the landlord for \$6,450.00 which must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The tenant's application is dismissed in its entirety, without leave to reapply.

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 21, 2012.

Residential Tenancy Branch