



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, MNDC, ET, 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 August 2, 2012, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 10, 2012, the tenant did not appear.

Preliminary Matter

In addition to the Landlord's request for an Order of Possession and Monetary Order for Unpaid Rent, the landlord had also checked off the box on the Application for Dispute Resolution form indicating that he was seeking an "ET". However, this is to seek an Order to End Tenancy Early without Notice, which is a separate and distinct application submitted under section 56(1) of the Act. An application under that section of the Act is not consistent with the rest of the landlord's application.

Section 59(5) states that the application for dispute resolution may be declined if, in the dispute resolution officer's opinion the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Given the above, I decline to proceed with the portion of the application relating to the request for an "ET" under section 56(1) of the Act. However, The landlord's other requests for an Order of Possession based on the Notice to End Tenancy for Unpaid

Rent dated August 2, 2012 and the monetary order for rent owed, will still be considered and determined at this hearing.

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 August 2, 2012 with effective date of DT, 2009. The landlord testified that the tenancy began in May 2012, , at which time the tenant paid a security deposit of \$600.00 and Pet Damage Deposit of \$600.00. The landlord testified that the tenant failed to pay \$100.00 rent for May 2012, and failed to pay \$1,200.00 rent for each of the months of June, July, August and September 2012 amounting to a total of \$4,900.00 which is being claimed. According to the landlord the tenant also owes \$1,085.00 in utility charges based on a term in the tenancy agreement requiring the tenant to pay utilities. However, no copy of the tenancy agreement was in evidence. The landlord testified that the tenant has not vacated the unit and the landlord has requested 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 on August 2, 2012. 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 entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$4,950.00 comprised of \$4,900.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I find that the claim for utilities was not supported by evidence to show that there was a term in the written tenancy agreement requiring the tenant to pay utilities. Accordingly, I find that this portion of the monetary claim must be dismissed.

I order that the landlord retain the security and pet-damage deposits of \$1,200.00 in partial satisfaction of the claim leaving a balance for the landlord in the amount of \$3,750.00.

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 \$3,750.00. 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: September 06, 2012.

Residential Tenancy Branch