



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, CNR, RP, 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,
- An order to force the landlord to do repairs

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?

Is the landlord entitled to compensation for rental arrears?

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

Should the landlord be ordered to complete repairs?

Preliminary Issues

Request to Extend Time Limit to Dispute the Notice

The tenant has requested that the 5-day deadline to dispute the Notice be extended.

Section 46 (1) of the Act provides that a landlord may end a tenancy with 10 days notice by giving notice to end the tenancy if the tenant fails to pay the rent when it is due. After the 10-Day Notice to End Tenancy for Unpaid Rent has been served, section 46(4) of the Act provides that a tenant may dispute the notice by making an application for dispute resolution within 5 days after the date the tenant receives the Notice.

In this instance I find that the five-day period would have expired on or before January 16, 2013. I find that the tenant made application to dispute the notice on January 25, 2013. I find that the tenant disputed the Notice 14 days after receiving Notice.

The tenant has asked that the time limit be extended, based on the tenant's exceptional circumstances.

Although section 66(1) of the Act does permit extending the deadline in exceptional circumstances, section 66(3) of the Act limits this authority by stating that an arbitrator has no authority to extend the time limit to make an application to dispute a 10 Day Notice to End Tenancy beyond the effective date of the Notice.

In this instance, the effective date shown on the Notice was January 23, 2013 and the tenant's application was not made until January 25, 2013, which is beyond the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent.

I find that the tenant's application and request was submitted beyond the effective date for ending the tenancy shown on the Notice. Therefore I have no authority to consider exceptional circumstances to extend the deadline for making an application to dispute the Notice.

Given the above, I find that the tenant's request to be allowed an extension of time to dispute the merits of this Ten Day Notice to End Tenancy for Unpaid Rent must be dismissed.

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started approximately 7 years ago and the rent is \$700.00 per month. The landlord testified that no security deposit was paid. However, the tenant testified that a security deposit of \$350.00 was paid at the start of the tenancy.

No copy of the tenancy agreement was in evidence.

Evidence submitted included a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated January 10, 2013, indicating that the tenant was in arrears for \$700.00 rent for December 2012 and January 2013.

The landlord testified that the tenant made a payment of \$700.00 by cheque on January 25, 2013 marked, "*Rent for February*".

The tenant did not dispute that they were in arrears for rent owed and stated that they decided to withhold rent for December 2012 and January 2013 because this was the only way that they could influence the landlord to complete necessary repairs to the unit.

Analysis:

Based on the testimony of both parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant did not pay all of the outstanding rent and did not apply to dispute the Notice within the five-day deadline. 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 tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed and the landlord is entitled to an Order of Possession.

In regard to the rental arrears, I find that, as of January 10, 2013, the tenant was in arrears for rent in the amount of \$1,400.00. I find that the tenant paid \$700.00, bringing the arrears down to \$700.00 as of January 25, 2013. However, as of February 1, 2013, the \$700.00 rent for February came due and the arrears now total \$1,400.00.

In regard to the portion of the tenant's application seeking repairs to the suite, I find that this matter is moot as the tenancy is ending.

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. 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 find that the landlord is also entitled to total monetary compensation of \$1,450.00 comprised of \$1,400.00 in rental arrears and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$362.24 security deposit and interest in partial satisfaction of the claim, leaving \$1,087.76 still outstanding to the landlord.

I hereby issue a monetary order in favour of the landlord for \$1,087.76 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

Conclusion

The landlord is successful in the application and is granted a monetary order for rent, an order to retain the security deposit and an Order of Possession.

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: February 18, 2013

Residential Tenancy Branch

