



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 seeking an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent effective March 12, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and all of the evidence that was served properly has been reviewed. The parties were also permitted to present affirmed oral testimony and submissions during the hearing. In making this decision, I have considered the relevant evidence and testimony provided that was properly served.

Issue(s) to be Decided

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 with effective date of March 12, 2013. No other evidence was submitted.

The tenancy began approximately 3 years ago, at which time the tenant paid a security deposit of \$850.00. The landlord testified that the tenant failed to pay \$1,700.00 rent on March 1, 2013 and a 10-Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that, although the date below the signature on the 10-Day Notice to End Tenancy for Unpaid Rent shows the date as March 12, 2013, the document was actually signed and served on March 2, 2013. The landlord testified that they served the

Notice on the tenant by placing it in the mail slot on March 2, 2012 and also discussed the Notice with the occupants thereafter.

The landlord testified that the tenant did not pay the arrears owed for March 2013 and also failed to pay the \$1,700.00 owed for April 2013, accruing a total debt of \$3,400.00, which is being claimed.

The landlord testified that the tenant did not dispute the Notice, but did not vacate the rental unit. The landlord is seeking an Order of Possession.

The tenant acknowledged that the rent for March and April 2012 was never paid. The tenant testified that they did not receive a 10-Day Notice to End Tenancy for Unpaid Rent. The tenant testified that they are on a fixed income and are enduring serious financial problems and have no place to go. The tenant feels that they should be granted an extension so that they can try to find somewhere to relocate.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by placing it in the tenant's mail slot on March 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.

In regard to the tenant's request that they be granted an "extension" to relocate, I find that section 66(1) of the Act allows an arbitrator to extend some time limits imposed by the Act, only in specific and exceptional circumstances.

In cases where the dispute involves a Ten Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act, an arbitrator has limited power to extend the 5-day time deadline to allow a tenant to pay overdue rent only in one of the following circumstances:

The extension is agreed to by the landlord,

The tenant has deducted the unpaid rental amount to cover proven expenses for urgent emergency repairs, or

The tenant has obtained an Order issued by an arbitrator in the past that permits the tenant to withhold all or part of the rent.

Even if one of the above circumstances exists, allowing an extension of the time limit, then section 66(3) of the Act still prohibits the arbitrator from extending the statutory 5-

day deadline for the tenant to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of that notice. I therefore find that I do not have any power under the Act to grant an extension in the circumstances before me.

In any case, this is not the tenant's application. I find that the only matter before me is the landlord's application requesting an Order of Possession and monetary order, based on the Ten Day Notice to End Tenancy for Unpaid Rent.

I find that the landlord has established a total monetary claim of \$3,450.00, comprised of \$3,400.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$850.00 in partial satisfaction of the claim leaving a balance due of \$2,600.00.

I hereby grant the landlord an order, under section 67 of the Act, for \$2,600.00. 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.

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.

Conclusion

The landlord's application is successful and the landlord is granted a monetary order for rental arrears and an Order of Possession.

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: April 09, 2013

Residential Tenancy Branch

