



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes *OPR, MNR, 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 an order to cancel the 10-Day notice to end tenancy for rent.

The landlord attended the hearing. Despite being served in person with the landlord's application and having made his own application for dispute resolution, the tenant did not appear.

As the tenant did not appear to present their case, the tenant's application was dismissed. The hearing proceeded with respect to the landlord's application.

I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided: Landlord's Application

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and utilities based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on March 1, 2013 for a 6-month fixed term and the rent is \$1,100.00 per month payable on the 1st day of each month. A security deposit of \$550.00 was paid. A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence. The landlord testified that the tenant failed to pay the \$1,100.00 rent owed for April 2013. A Ten Day

Notice to End Tenancy for Unpaid Rent was served on the tenant in person on April 5, 2013, after which the tenant gave the landlord a cheque for the arrears. The landlord testified that this cheque failed to clear as it was written on a bank account that had been closed. The landlord testified that the tenant then defaulted on the rent owed for May 2013.

The Ten Day Notice to End Tenancy for Unpaid Rent indicated that utility costs were "TBD". However, the application for dispute resolution from the landlord indicated that the landlord is claiming \$60.00 for the hydro payment. The landlord stated that the tenant did not have the hydro account connected in his name, as required.

The landlord is seeking an Order of Possession, a monetary order for \$2,200.00 for two months rent and the hydro costs.

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, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

Given the above, I find that the Ten-Day Notice is justified and will not be cancelled. I find that the landlord is entitled to an Order of Possession under the Act.

With respect to the claim for hydro service, I find that the landlord has not provided sufficient evidence to verify what is genuinely owed. I find that this portion of the landlord's claim must be dismissed.

I find that the tenant failed to pay rent for the months of April and May 2013 and the landlord is entitled to compensation of \$2,200.00 plus the \$50.00 cost of filing the application.

I order that the landlord retain the tenant's \$550.00 security deposit in partial satisfaction of the claim, and hereby issue a monetary order to the landlord for the remainder of \$1,700.00.

This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court 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 may be filed in the Supreme Court and enforced as an order of that Court.

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

Conclusion

The landlord is partially successful in the application and is granted a monetary order and an Order of Possession while the tenant's application seeking to cancel the Notice is dismissed without leave.

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: May 06, 2013

Residential Tenancy Branch

