



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, OPR, OPB, FF

Introduction

This hearing dealt with an Application by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent, a monetary order for rental arrears and for costs incurred by the landlord during the tenancy. The landlord is also seeking payment of an unpaid pet damage deposit and compensation for anticipated loss of rent for the month that will follow the tenant's likely departure.

Despite being served with the Notice of Hearing by registered mail sent on July 11, 2013, the respondent tenant did not appear.

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?

Is the landlord entitled to monetary compensation for damages and losses?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated June 3, 2013 with effective date of June 20, 2013 and a copy of the tenancy agreement.

The landlord testified that this tenancy began on November 1, 2012. The rent is \$725.00 and a security deposit of \$360.00 was paid. The landlord testified that the tenant had only paid \$125.00 of the \$725.00 rent owed for April 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served in person on the tenant.

The landlord testified that the tenant did pay the rent for the months of May, June and July 2013, but this rent was accepted, "*For Use and Occupancy only*".

The landlord testified that the tenant has never paid the remaining \$600.00 for April 2013, did not vacate the unit and did not file an application disputing the 10-Day Notice to End Tenancy for Unpaid Rent. The landlord is requesting an order of possession and a monetary order for the \$600.00 rent owed.

The landlord testified that the tenant failed to maintain the lawn, as required in the tenancy agreement that she signed and the landlord incurred expenditures totaling \$70.00 for the lawn maintenance. The landlord is claiming reimbursement for the costs.

In regard to the landlord's claim for nonpayment of the \$150.00 pet damage deposit, due on November 12, 2012, the landlord testified that the tenancy agreement required that the deposit be paid, but the tenant did not comply.

With respect to the landlord's claim for anticipated loss of rent, according to the landlord, this claim is based on the fact that the landlord will not likely be able to show and re-rent the rental unit to avoid a loss when the tenant moves out.

Analysis

In regard to the \$600.00 in rental arrears being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. I find that the evidence shows that the tenant failed to pay the rent when it was due.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to terminate the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

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. 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 and entitled to compensation for unpaid rental arrears totaling \$600.00 for April 2013.

With respect to the landlord's claim for damages, including the costs associated with the tenant's failure to maintain the lawn and the anticipated losses of revenue, I find that

these matters are dealt with under section 7 of the Act which states that if a party does not comply with the Act, the other party must compensate them for any loss that results. Section 67 of the Act grants an arbitrator authority to determine the amount and to order payment.

The party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

I find that the landlord's claim for the cost of lawn maintenance meets all elements of the test for damages. I find the tenant failed to comply with a term in the tenancy agreement and the landlord incurred costs of \$70.00 as a result. Accordingly, I find that the landlord is entitled to monetary compensation for \$70.00.

I find that the landlord's claim for the anticipated loss of revenue is premature because no tangible loss has transpired yet. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Therefore, I find it necessary to dismiss this portion of the landlord's application, with leave to reapply.

I find that the landlord's claim for payment of the pet damage deposit is moot. This claim should have been made close to the start of the tenancy or the time that the acquisition of the pet occurred. In any case, this tenancy is now ending and deposits held in trust on behalf of the tenant will be refunded or credited to the tenant at this point.

I find that the landlord has established a total monetary claim of \$720.00, comprised of \$600 for rental arrears for April 2013, \$70.00 for the cost of the lawn maintenance and the \$50.00 fee for this application. I order that the landlord retain the tenant's \$360.00 security deposit in partial satisfaction of the claim leaving a balance due of \$360.00.

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. It may be filed in Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord a monetary order under section 67 for \$360.00. 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.

The landlord's claim for loss of rent is dismissed with leave and the landlord's claim for the pet damage deposit is found to be moot.

Conclusion

The landlord is successful in this application and is granted a monetary order and an Order of Possession. The remainder of the application is dismissed with 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 07, 2013

Residential Tenancy Branch