



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent, a monetary order for accrued rental arrears and monetary compensation for damages to the suite.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on August 22, 2013, the tenant did not appear.

Preliminary Matter

The landlord has included claims for cleaning, losses and damage to the suite. However, I find that the landlord's claims for damages are premature. Under the Act, the move-out condition inspection cannot be performed until it is confirmed that the tenant has vacated and removed all of their possessions.

I find that the landlord is not certain whether or not the tenant has permanently vacated the rental suite. Accordingly the portion of the landlord's application claiming reimbursement for cleaning and damages must be dismissed and I do so with leave to reapply.

However, the remainder of the application will proceed and a determination will be made on the landlord's other requests.

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 is entitled to monetary compensation for rental arrears owed?

Background and Evidence

The tenancy began on January 15, 2013 and the current monthly rent is \$900. A security deposit of \$450 and a pet damage deposit of \$450 were paid.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent confirming that, as of May 2, 2013, the tenant had fallen into arrears for \$900.00 in rent. The landlord testified that the tenant also owed \$350.00 rent for April as her cheque was returned for non-sufficient funds. The landlord testified that the tenant failed to pay rent for June 2013 and a second 10-Day Notice to End Tenancy for Unpaid Rent was served on June 2, 2013. According to the landlord the tenant has not paid any rent since April and has accrued total arrears of \$3,950.00.

The landlord is seeking a Monetary Order for this amount plus an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant failed to pay the arrears within 5 days pursuant to the Act to cancel the Notice. I find that the tenant did not apply to dispute the Notice within the 5-day deadline prescribed under the Act. Therefore, the tenant is 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.

With respect to rent owed, 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 tenant failed to pay the rent when rent was due and accrued further arrears. Accordingly I find that the landlord is entitled to compensation for rental arrears in the amount of \$3,950.00.

I find that the landlord is entitled to total compensation of \$4,000.00, comprised of \$3,950.00 in arrears and the \$50.00 cost of the application. I order the landlord to retain the tenant's security and pet damage deposits of \$900.00 in partial satisfaction of the claim leaving \$3,100.00 still outstanding.

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.

I hereby grant the Landlord an order under section 67 for \$3,100.00. 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 remainder of the landlord's application is dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for rent and an Order of Possession, while the remainder of the claims for damages are 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: September 05, 2013

Residential Tenancy Branch

