



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes *OPR, MNR, CNR, FF.*

Introduction

This hearing dealt with cross 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 a Ten Day Notice to End Tenancy for Unpaid Rent.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on September 18, 2013, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

As the tenant did not appear to present evidence, I find that the tenant's application seeking to cancel the 10-Day Notice must be dismissed. The hearing proceeded with respect to the landlord's application.

Remaining Issues to Be Decided

- Is the landlord entitled to an order of possession and a monetary order for rental arrears, based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The tenancy started in July 2012 and the current rent is \$700.00 per month payable on the 1st day of each month. The landlord testified that a security deposit was originally paid at the start of the tenancy, but was already allocated by the tenant in the past

towards rental arrears previously incurred, and the landlord had allowed this, on the condition that the tenant would repay the deposit at a later date. The landlord testified that the tenant never repaid the security deposit and therefore no funds are currently being held in trust as a security deposit for the tenant at this time.

The landlord testified that the tenant failed to pay \$700.00 rent owed for the month of September 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served in person on September 2, 2013.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence. The landlord testified that the tenant has neither paid the rent nor vacated the rental unit and the landlord seeks an Order of Possession and a monetary order for the \$700.00 in arrears.

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.

I find that there is no dispute about the fact that the tenant failed to pay the rental arrears owed within 5 days of receiving the Notice. Payment within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid.

Therefore, I find that the 10-Day Notice for Unpaid Rent is supported by section 46 of the Act and still remains in effect. Based on the testimony and evidence, I find that the landlord is entitled to an Order of Possession under the Act.

I find that the tenant owes \$700.00 in rental arrears for September 2013. Accordingly, I find that the landlord is entitled to compensation of \$750.00, comprised of \$700.00 accrued rental arrears and the \$50.00 cost of the application.

I hereby grant the landlord a Monetary Order for \$750.00. 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 successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled 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: October 01, 2013

Residential Tenancy Branch

