



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, OPR OPC, FF, ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rental arrears and an Order of Possession based on a Ten Day Notice to End Tenancy for Unpaid Rent dated July 30, 2013. The landlord had also applied for an Order of Possession based on a One-Month Notice to End Tenancy for Cause. The application also indicated that the landlord was seeking to terminate the tenancy without Notice.

Both parties were present at the hearing. 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 the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Early Termination

Although the application indicated that, in addition to the other requests, the landlord was also requesting an order termination this tenancy without Notice, under section 56 of the Act, this matter will not be heard in conjunction with the remainder of the application.

Section 59(2) of the Act states that an application for dispute resolution must be in the applicable approved form and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings and 59(5) states that the application may be declined if, in the arbitrator's opinion, the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so,

he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the landlord's request for an order to terminate this tenancy early without Notice, pertains to a separate and distinct section of the Act that is not connected to the landlord's monetary claim, nor to the One Month Notice to End Tenancy for Cause, nor to the request for an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Accordingly, I find that the portion of this application relating to the request for an early termination without Notice must be severed and this matter must be dealt with through a separate application under section 56 of the Act. I decline to consider this matter and make no findings.

10-Day Notice to End Tenancy for Unpaid Rent

The tenant had already made an application to cancel the 10-Day Notice to End Tenancy for Unpaid Rent dated July 30, 2013 and a previous hearing was held on September 12, 2013. In the September 17, 2013 decision, the arbitrator found that the tenant was in arrears for rent totaling \$1,600.00, but granted the tenant's request to cancel that Notice, based on the incorrect amount of arrears shown on the Notice. A finding was also made that, as of September 12, 2013 the tenant's rental arrears totaled \$1,600.00. A further finding was made that the current rental rate for this unit is set at \$775.00.

As the 10-Day Notice has already been cancelled at the tenant's prior hearing, I find that I am bound by the previous arbitrator's decision and therefore, lack jurisdiction to consider the landlord's request for an Order of Possession.

One Month Notice to End Tenancy for Cause

Although the landlord's application indicated that they were seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause, no copy of this Notice was submitted into evidence by the landlord.

Section 59(2) of the Act states that an application for dispute resolution must be in the applicable approved form and must also include full particulars of the dispute proceedings. Section 59(5) states that the application for dispute resolution may be declined if, in the dispute resolution officer's opinion, the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

I find that I cannot proceed in the absence of evidence confirming the Notice and therefore I decline to consider this matter and I make no findings with respect to the One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The tenancy began on December 10, 2011. Rent was found to be \$775.00 per month at the previous dispute resolution hearing. No security deposit is being held. The landlord testified that rent is due and payable on the 15th day of each month.

The landlord testified that the tenant fell into arrears and accrued a debt, a portion of which was paid, leaving \$1,215.00 owed prior to September 15, 2013, and additional amount of \$775 that was due on September 15, 2013 and an addition amount of \$775.00 that is now due and payable as of today, October 15, 2013.

The tenant disputed the amount of the arrears and other findings that were made at the previous hearing. The tenant pointed out that the July 30, 2013, 10-Day Notice to End Tenancy for Unpaid Rent has been ordered cancelled and the tenant is of the opinion that this would cancel the arrears claimed by the landlord.

The tenant testified that they have requested a Review Consideration of the previous Dispute Resolution decision and the decision is pending.

Analysis

Based on the evidence, I find that the tenant's request for a review consideration of the previous decision was dismissed on October 22, 2013 and therefore, the decision of September 17, 2013 still stands and I am bound by the findings of that decision.

I find that I am not at liberty to alter the previous finding that the current rental rate is set at \$775.00. Based on the evidence, I find that the arrears were \$1,215.00 prior to September 15, 2013, \$775 due on September 15, 2013 and an additional \$775.00 that now due and payable as of October 15, 2013.

Accordingly, I find that the landlord is entitled to total monetary compensation in the amount of \$2,815.00 comprised of \$2,765.00 in rental arrears and, the \$50.00 fee paid by the landlord for this application.

I hereby grant a monetary order in favour of the landlord for \$2,815.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's request for an Order of Possession based on the previously disputed 10-Day Notice to End Tenancy for Unpaid Rent is dismissed as the arbitrator overseeing the previous hearing held on September 12, 2013, ordered that the Notice to be cancelled.

I make no findings with respect to the landlord's request for an Order of Possession based on a One Month Notice to End Tenancy for Cause that was not in evidence and no findings in regard to the landlord's request for an Order to terminate the tenancy early without Notice.

Conclusion

The landlord is partially successful in the application and is granted a monetary order for rental arrears.

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 15, 2013

Residential Tenancy Branch

