Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 an order of possession pursuant to Section 55, a monetary order for rent based on a Ten Day Notice to End Tenancy for Unpaid Rent dated September 16. 2013.

The tenant had applied for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent an order to cancel a One-Month Notice to End Tenancy for Cause, an order to suspend or set conditions on the landlord's right to enter the rental unit, to be granted more time to dispute the Notice and an order to force the landlord to make repairs to the property.

The landlord was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on October 25, 2013, and the filing of their own application, the tenant did not appear and the hearing was therefore conducted in the respondent's absence.

As the tenant did not appear to present their evidence, I find that the tenant's application seeking to cancel the 10-Day Notice and the other orders being sought by the tenant 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 on August 26, 2013 and the current rent is $900.00 per month payable on the 1st day of each month. The landlord testified that no security deposit was paid at the start of the tenancy as the tenant's cheque for the security deposit had

not cleared the bank and was returned for insufficient funds. 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 fell into rental arrears for $1,074.00, as of September 16, 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant by registered mail sent on September 17, 2013.

The landlord testified that the tenant did not pay the arrears within 5 days. The landlord testified that the tenant also failed to pay $900.00 rent due on October 1, 2013 and $900.00 rent for November 2013, accruing total arrears of $2,874.00, which is being claimed.

The landlord is also seeking an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant recently gave the landlord a cheque on October 31, 2013, that would cover the rent owed, and this was accepted by the landlord, "*for use and occupancy only*". According to the landlord, because of the tenant's persistent practice and history of repeatedly writing cheques that are returned for insufficient funds, the landlord is still pursuing a monetary order for the current outstanding arrears of $2,874.00. The landlord testified that, while they are requesting a monetary order for the current arrears in full, the tenant will be credited with any payments that actually do clear the bank and they will apply the funds for "*use and occupancy*" of the unit by the tenant, bur will not reinstate the tenancy.

The landlord pointed out that, because the tenant did not pay the outstanding arrears within the 5-day statutory deadline to cancel the Notice, the landlord is entitled to end the tenancy and is requesting an Order of Possession based on the September 16, 2013 Notice.

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. Payment within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid.

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 and, therefore, the 10-Day Notice for Unpaid Rent is supported by section 46 of the Act and still remains in effect.

Although the tenant recently made a payment of the arrears, by a cheque that may or may not clear, I find that this payment was made after the 5-day deadline and even if the funds are received, this will not serve to reinstate the tenancy as the payment was accepted by the landlord, "*for use and occupancy only*".   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 $2,874.00 in accrued rental arrears at present. However, if the tenant's cheque to the landlord is not rejected for insufficient funds, the amount of the arrears will be reduced accordingly.

I hereby grant the landlord a Monetary Order for $2,874.00 plus the $50.00 cost of the application, for a total award of $2,924.00. This order must be served on the tenant and, if left 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: November 05, 2013

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Residential Tenancy Branch