



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent dated October 8, 2013. The landlord is also seeking a monetary order for rental arrears..

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 all evidence properly served 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 relevant evidence and testimony provided.

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 entitled to monetary compensation for rental arrears owed?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 8, 2013, with effective date of October 22, 2013.

The landlord testified that the tenancy began in June 2013, at which time the tenant paid a security deposit of \$317.50. The landlord testified that the tenant fell into arrears for rent of \$597.00 due on October 1, 2013 and a 10-Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The landlord testified that the tenant did not dispute the Notice and did not make any payments towards the debt. The landlord testified that the tenant also failed to pay rent of \$597.00 due on November 1, 2013 and

\$597.00 due on December 1, 2013 and now owes arrears of \$1,791.00, which is being claimed.

The landlord is seeking a Monetary Order and Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

The tenant did not dispute being in arrears for the amount of rent being claimed by the landlord. The tenant stated that they had discussed a payment plan with the landlord in which the tenant would make payments in October and November to catch up on the arrears but things didn't work out. The tenant testified that attempts were made to pay the landlord on December 5 and 6th, 2013, but the landlord told the tenant to wait for the arbitration hearing.

The tenant also pointed out that she did not move into the unit until July 2013. The tenant testified that there was some misunderstanding about the rental rate when she arrived and the rent was a lot higher than what she was expecting to pay.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent on October 8, 2013 by placing the Notice in the mail slot.

In regard to the rent 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, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end 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. In this instance I find that the tenant did neither.

The Ten-day Notice includes written instructions on page 2 informing the tenant about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading, "Important Facts", the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the Notice was served on October 8, 2013 and the tenant did not pay the arrears and in fact continued to withhold her rent for subsequent months afterward.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rental arrears within 5 days or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$1,841.00 comprised of \$1,791.00 in accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's \$317.50 security deposit in partial satisfaction of the claim, leaving a balance still outstanding in favour of the landlord of \$1,523.50.

I hereby issue a monetary Order in favour of the landlord in the amount of \$1,523.50. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

I hereby issue an Order of Possession in favour of the landlord effective 2 days afterservice. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is successful and is awarded monetary compensation for the rent owed and an Order of Possession

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: December 11, 2013

Residential Tenancy Branch

