



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent effective November 11, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

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 of the evidence that was served properly has been reviewed. The parties were also permitted to present affirmed oral testimony and submissions during the hearing. In making this decision, I have considered the 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 with effective date of November 11, 2013, a copy of the tenancy agreement, copies of communications and proof of service.

The landlord testified that the tenancy began in September 2013, at which time the tenant paid a security deposit of \$385.00. The landlord testified that the tenant failed to pay \$770.00 rent for November 2013. The landlord testified that the tenant was then served with a 10-Day Notice to End Tenancy for Unpaid Rent in person on November 2 or 3, 2013. The landlord testified that the tenant did not pay the arrears and also failed

to pay rent of \$770.00 for December 2013 and January 2014, amounting to arrears totaling \$2,310.00, which is now being claimed. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

Analysis

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 in November 2013.

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*".

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person on November 2, 2013.

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.

In this instance I find that the tenant was in arrears at the time the Notice was served, did not pay the \$770.00 arrears within the 5-day period and, In fact, failed to pay any rent owed for the months of December 2013 and January 2014.

I find that, because the tenant had not paid all of the outstanding rent and did not apply to dispute the Notice within 5 days, the tenant is therefore 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.

I find that the landlord has established a total monetary claim of \$2,360.00 comprised of \$2,310.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit of \$385.00 in partial satisfaction of the claim leaving a balance due of \$1,975.00.

I hereby grant the Landlord an order under section 67 for \$1,975.00. 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.

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 is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord's application was successful and the landlord was granted a monetary order for rental arrears 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: January 02, 2014

Residential Tenancy Branch

