



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPC, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on a One-Month Notice to End Tenancy for Cause dated October 27, 2013. The landlord is also seeking monetary compensation for rent owed.

Despite being served in person on January 7, 2014, the tenant did not appear. I accept that the Notice of Hearing was properly served under the Act. The hearing therefore proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Background and Evidence Notice to End Tenancy

The landlord testified that the tenancy had originally started on March 1, 2013, at which time the tenant paid a security deposit of \$100.00. The landlord testified that the tenant was issued a One-Month Notice to End Tenancy for Cause. A copy of the One-Month Notice to End Tenancy for Cause dated January 6, 2014 was submitted into evidence. The landlord is seeking an Order of Possession.

The landlord testified that testified that the tenant did not file an application to dispute the Notice, has not paid the rent and has refused to vacate the unit. The landlord is claiming rental arrears of \$1,600.00.

Analysis

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 the Act, the regulations or the tenancy agreement. I find that the tenant does owe rental arrears. However, the landlord has not issued a 10-Day Notice to End Tenancy for Unpaid Rent notifying the tenants and demanding payment of the arrears. That being said, I accept that the amount owed to the landlord for rent exceeds the \$100.00 security deposit being held by the landlord.

Under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause and section 47(2) of the Act states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and is effective the day before the day in the month that rent is payable under the tenancy agreement.

The Act also states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

- (b) must vacate the rental unit by that date.

In this instance, the tenant failed to make an application to dispute the One-Month Notice.

Therefore I find that under the Act an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

I hereby grant the landlord an Order of Possession effective two days after service. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to retain the tenant's security deposit of \$100.00, \$50.00 of which will be applied to the cost of the application and the remaining \$50.00 is awarded to be applied towards rental arrears owed.

The landlord's claim for the remaining amount of rental arrears still owed is dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession based on the One Month Notice to End Tenancy for Cause and is ordered to retain the tenant's security deposit for the cost of the application and \$50.00 towards rent owed. The remaining portion of the landlord's monetary claim is dismissed with leave to reapply.

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: February 19, 2014

Residential Tenancy Branch

