



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR,

Introduction

This application was brought by the landlord seeking an Order of Possession and a monetary order based on a 10-day Notice to End Tenancy for Unpaid Rent dated April 4, 2014.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on April 24, 2014, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

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 dated June 4, 2012?
- Is the landlord is entitled to a monetary order for rental arrears?

Background and Evidence

The tenancy began in November 2013 and the current rent is \$1,000.00. A security deposit of \$500.00 and pet damage deposit of \$300.00 are being held by the landlord.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated April 4, 2014 with effective date of April 18, 2014. Also in evidence is a copy of a cheque for \$2,000.00 dated May 1, 2014 and a copy of a receipt for \$2,000.00 dated May 22, 2014, stating that the payment was "*for use and occupancy only*". A second receipt dated June 7, 2014 for \$1,000.00 was also submitted showing this payment for the month of June 2014 labeled, "*for use and occupancy only*"

The landlord testified that, when the tenant failed to pay rent due on April 1, 2014, a 10-Day Notice to End Tenancy for Unpaid Rent was served on the tenant by posting it on the door..

The landlord acknowledged that the tenant's rent was no longer in arrears, but pointed out that the tenant failed to pay these arrears within the required 5-day deadline required to cancel the Notice.

The landlord still seeks an Order of Possession.

Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. In this instance, the tenant had fallen into arrears by failing to pay the rent when it was due on June 1, 2012.

Section 46 of the Act states that a landlord may issue a Notice to End a tenancy whenever rent is unpaid after the day it is due, effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, the Act 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.

If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution 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.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent posted on April 4, 2014 and deemed under the Act to have been received in three days as of April 7, 2014.

I find that, to cancel the Notice, the tenant would therefore have had to pay the arrears on or before April 13, 2014. In this instance, the tenant paid the arrears after May 1, 2014 and was then issued a receipt by the landlord for "*Use and Occupancy Only*". A second receipt "for use and occupancy only" was issued when the tenant paid \$1,000.00 rent for the month of June 2014.

Given the above, I find that the May 1, 2014 payment for the April rent arrears was made too late to cancel the 10-Day Notice.

Based on the above facts I find that the landlord is therefore entitled to an Order of Possession under the Act.

However, as the tenant paid the rent in full for the months of April, May and June 2014, I find that all outstanding rental arrears have been satisfied up until the end of June 2014 so no monetary order for rent is necessary.

I hereby issue an Order of Possession in favour of the landlord effective June 30, 2014. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I grant the landlord compensation for the \$50.00 cost of this application and order that the landlord retain \$50.00 from the tenant's \$500.00 security deposit, leaving \$450.00 remaining of the security deposit, and the \$300.00 pet damage deposit, still held in trust to be administered under section 38 of the Act.

Conclusion

The landlord is successful in the application and is granted an Order of Possession. The claim for rental arrears is found to be moot as the tenant has paid in full.

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: June 10, 2014

Residential Tenancy Branch

