



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, OPR, FF, CNR , MNDC, MNSD, LAT

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession and a monetary order based on the Notice to End Tenancy for Unpaid Rent dated May 2, 2014. The landlord is also claiming compensation for unpaid utilities and damages including loss of rent, costs of cleaning, repairs and garbage removal.

The hearing was also convened to deal with an application by the tenant seeking to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and requesting a monetary order for damages and an order authorizing the tenant to change the locks.

Both parties were present. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties had an opportunity to submit documentary evidence prior to the hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions. I have considered all of the relevant evidence that was properly served.

Preliminary Matters

Order of Possession

Although the landlord's application indicated that the landlord was requesting an Order of Possession, at the outset of the hearing, the landlord stated that they are no longer seeking the Order of Possession as the tenant had vacated the unit on May 26, 2014, which occurred after the landlord had already made their application on May 8, 2014. Therefore the issue of an order of possession ending the tenancy is now moot. However, the landlord still seeks a monetary order for rental arrears and the hearing must proceed on that matter.

Landlord's Monetary Claim for Damages

In addition to the claim for rental arrears based on the May 2, 2014 10-Day Notice to End Tenancy for Unpaid Rent the landlord's application included claims

for cleaning, losses and damage to the suite. However, I find that the landlord's claims for damages are premature. Under the Act, the move-out condition inspection assessing the suite could not be performed until the tenant had vacated and removed all of their possessions.

In this instance, I find that that the tenant was still in the unit when the landlord filed the application. Accordingly the portion of the landlord's application claiming loss of rent for the month after the tenant left and reimbursement for cleaning and damages must be dismissed and I do so with leave to reapply.

However, the remainder of the application relating to the 10-Day Notice to End Tenancy for Unpaid Rent will proceed and a determination will be made.

Tenant's Monetary Claim

In addition to seeking an order to cancel the landlord's 10-Day Notice to End Tenancy for Unpaid Rent, the tenant's application also included a distinct request for monetary compensation for damages and loss.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the landlord's monetary claim pertained to a separate and distinct section of the Act and was not related to the issue of ending the tenancy pursuant to section 46 of the Act.

Accordingly, I find the monetary portion of this application must be severed and dealt with through a sepperate application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply.

Issue(s) to be Decided

The only remaining issue to be determined, based on the testimony and the evidence is whether the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

Submitted into evidence was a copy of the 10-Day Notice to End Tenancy dated May 2, 2014 with effective date of May 12, 2014. No copy of the tenancy agreement was placed in evidence and the landlord testified that there was no written agreement between the parties, only verbal terms..

The tenant had paid a security deposit of \$500.00. The landlord testified that the tenant failed to pay \$1,000.00 rent owed for the month of April and was issued with a Ten Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant did not pay the April arrears and then also failed to pay \$1,000.00 rent for May and a second 10-Day Notice to End Tenancy for Unpaid Rent was served on May 2, 2014. The landlord testified that the tenant is now \$2,000.00 in arrears for rent. The landlord has requested an Order of Possession.

In addition to the above, the landlord is requesting compensation for utility arrears under the verbal tenancy agreement in which the tenant committed to paying 40% of utilities to the upstairs residents. The landlord testified that the tenant now owes \$700.00 accrued over several months.

The tenant acknowledged that the rents for April 2014 and for May 2012 were never paid. The tenant pointed out that the unit was not a legal suite and that the land lord had interfered with the tenant's right to quiet enjoyment.

The tenant's claim for compensation has been severed from this proceeding. The tenant is also requesting that they be permitted to change the locks.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on May 2, 2014. The landlord stated that the tenant has not paid the outstanding rent. 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 \$2,050.00 comprised of \$2,000.00 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 \$500.00 in partial satisfaction of the claim leaving a balance due of \$1,550.00.

In regard to the landlord's claim for utility arrears based on an enforceable term in the tenancy agreement, I find that section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the they cannot resolve a dispute. (my emphasis)

According to the landlord, there is a specific term in the tenancy agreement requiring the tenant to pay for half the utilities for the complex and the tenant failed to pay. However, no copy of the tenancy agreement was placed in evidence. I was unable to examine and interpret the contract term detailing payment of utilities.

Because the term requiring payment of utilities was pursuant to a specific provision within the tenancy agreement and the tenancy agreement is not in evidence before me, I find insufficient evidence was submitted by the landlord that would enable me to grant the utility arrears portion of the landlord's claim. I find that the claim for utility arrears must therefore be dismissed.

Based on the evidence before me, 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.

I hereby grant the Landlord an order under section 67 for \$1,550.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the tenant has already moved out, the portion of the tenant's application seeking to change the locks is now moot and need not be considered. The tenancy has ended and the tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is hereby dismissed in its entirety without leave to reapply.

Conclusion

The monetary portion of the tenant's application has not been heard as it is severed and dismissed with leave to reapply. The remainder of the tenant's application to cancel the Notice and change the locks is dismissed in its entirety without leave.

The landlord is partly successful in the cross application and is granted a monetary order for rental arrears. The portion of the landlord's application seeking damages has been found to be premature at the time the landlord made their application and this part of the claim is therefore 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: June 12, 2014

Residential Tenancy Branch

