



Dispute Resolution Services

Page: 1

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 seeking an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated May 7, 2014 and a monetary order for rent owed.

The landlord was present at the hearing. The tenants were represented by a relative and also had a witness attend. 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 the evidence 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 affirmed testimony and relevant evidence that was properly served.

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 tenancy began in April 2014 with rent set at \$1,600.00. A security deposit of \$800.00 and pet damage deposit of \$100.00 were paid.

The landlord testified that, on May 1, 2014 when the rent was due, the tenant failed to pay the \$1,600.00 rent and a Notice to End Tenancy was issued on May 7, 2014 and served on the tenant in person. The landlord submitted into evidence a copy of the 10-Day Notice.

The landlord testified that the tenant did not pay the arrears, nor did the tenant file to dispute the Notice. The landlord testified that the tenant has also failed to pay \$1,600.00 due on June 1, 2014 and \$1,600.00 due on July 1, 2014. The landlord is seeking a Monetary Order and an Order of Possession.

The tenant's representative did not agree that rent was in arrears, and stated that the representative was present when the rent was paid to the landlord in cash for May and June 2014. The tenant's representative testified that, although the landlord had issued a receipt for the security deposit and pet damage deposit, the landlord refused to issue a receipt for the rent paid.

The tenant's witness testified that three co-tenants each paid a portion of the rent to the landlord in cash when it was due. The tenant's representative did not explain why they failed to dispute the 10-Day Notice alleging unpaid rent within the required 5-day deadline in May 2014. The tenant also did not explain why they did not demand a receipt before allegedly paying the next rent payment on June 1, 2014, being that the 10-Day Notice to end the tenancy was already served on them and a hearing already scheduled to enforce the Notice.

Analysis

Based on the testimony of both parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively 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 defences put forward by the tenant with in support of their claim that they paid the rent are not sufficient to meet the burden of proof, particularly given that the tenants did not dispute the Notice served on May 7, 2014, and the claim that they allegedly paid rent for June 2014 without first demanding a receipt for the earlier disputed May rent payment and the pending June rent payment.

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 the Act, the regulations or the tenancy agreement. .

Based on the evidence before me, I accept the landlord's testimony and find that the landlord has established a total monetary claim of \$4,850.00 comprised of \$1,600.00 rent still owed for May 2014, \$1,600.00 rent owed for June 2014, \$1,600.00 owed for July 2014 and the \$50.00 fee paid by the landlord for this application. I order that the

landlord retain the security and pet damage deposits of \$900.00 in partial satisfaction of the claim, leaving a balance due to the landlord in the amount of \$3,950.00.

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 a monetary order under section 67 for \$3,950.00. 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.

Conclusion

The landlord is successful in the application and is granted a monetary order and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

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: July 10, 2014

Residential Tenancy Branch

