



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, and a monetary order for unpaid rent. The matter was originally heard on May 22, 2014 in the absence of the tenant. The tenant made an successful application for Review Consideration and was granted a rehearing.

Both parties were present at the hearing. 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 for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The landlord testified that the tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on March 28, 2014, by posting it on the door. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

A copy of the 10-Day Notice is in evidence and indicates that the tenant was in arrears for rent in the amount of \$550.00 on March 28, 2014. The landlord testified that the tenant did not pay the arrears nor did she file an application for dispute resolution to dispute the 10-Day Notice.

The tenant stated that no notice was ever served. The tenant stated that she paid the rent for the month of March 2014.

The landlord testified that the tenant has also failed to pay rent for April, May, June and July 2014. However, the tenant disputed the landlord's claim that no rent was paid for 5 months and stated that she paid rent every month and has receipts to prove this.

The tenant had submitted documentary evidence, but this evidence was not accepted as it was established by both parties that it had never been served on the landlord. The tenant claimed that she was told by Residential Tenancy Branch that it was not necessary to serve the evidence on the landlord.

The landlord admitted that he had provided the tenant with receipts for payments that were never made so that she would have documentation to take to apply for social benefits.

The landlord stated the tenant provided him a letter that she would vacate the unit by May 1, 2014. However, she is still residing in the unit.

The landlord seeks an order of possession and a monetary order for 5 months of rental arrears.

Analysis

In regard to 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.

I accept the landlord's testimony that the tenant defaulted on the rent in March 2014.

I find that, when a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date not earlier than 10 days after the date the tenant receives it.

I accept the landlord's evidence that the Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant by posting it on the door on March 28, 2014.

Section 46 of the Act also provides that, within 5 days after receiving a 10-Day Notice, the tenant may either pay the overdue rent, in which case the notice has no effect, or in the alternative, the tenant can dispute the notice by making an application for dispute resolution. In the case before me, I find that the tenant did not exercise either of these two options.

The Ten-day Notice dated March 28, 2014, 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*".

In this instance I find that the tenant was in arrears at the time the Notice was served on and the tenant did not pay these arrears.

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.

Given the above, I find the landlord is entitled to an Order of Possession under the Act.

In regard to the landlord's monetary claim, I accept that the tenant is genuinely in arrears for rent in some amount. However, I find that the landlord's admission that he issued receipts for payments that were not actually made, affects the veracity of this monetary claim and I am not prepared to grant the landlord an order for compensation in an amount that may or may not be accurate.

For this reason, I find that the portion of the landlord's application seeking monetary compensation must be dismissed.

Based on the evidence before me, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the landlord's application, including the monetary claim is dismissed without leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an order of possession based on a 10-Day Notice to End Tenancy for Unpaid Rent. The monetary claim portion of the landlord's application is dismissed without leave.

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 24, 2014

Residential Tenancy Branch

