



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes *OPR, MNR, MNSD, MNDC, CNR,, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession pursuant to Section 55; a monetary order for rent owed, pursuant to Section 67; and a monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for more time to dispute the Ten Day Notice to End Tenancy for Unpaid Rent , an order to cancel the Ten Day Notice and dispute an additional rent increase.

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 testimony and relevant evidence that was properly served.

Preliminary Issues

Tenant's Request for an Extension of Time to File

In regard to the portion of the tenant's application seeking an extension of time in which to file an application to dispute the Notice, I find it is not necessary to grant more time in which to apply, because the tenant did succeed in filing the application to dispute the Notice within the 5-day deadline after receiving the Notice.

Tenant's Amended Application and Additional Evidence

An amended application dated July 17, 2014 along with additional evidence was served by the tenant and received by the Residential Tenancy Branch on July 18, 2014.

Residential Tenancy Rules of Procedure, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

The “*Definitions*” portion of the Rules of Procedure states that when the number of days is qualified by the term “*at least*” then the first and last days must be excluded, in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that, the tenant’s evidence was not served at least 5 days prior to the hearing. Accordingly, the tenant’s amended application and additional documentary evidence were excluded from consideration.

Issues to be decided: Landlord’s Application

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent ?

Issues to be decided: Tenant’s Application

- Is the tenant entitled to an Order cancelling the Notice to End Tenancy for Unpaid Rent?
- Is the tenant entitled to an Order with respect to an additional rent increase imposed by the landlord?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in February 2012 after the tenant, who owned the home at the time, the property to the landlord. No security deposit was paid.

The current rent is \$1,000.00 per month payable on the 1st day of each month. However, the parties testified that the tenant was required to pay \$1,200.00 per month as part of an agreement to pay installments each month for past arrears.

The landlord testified that the tenant failed to pay rent on May 1, 2014, which included the \$1,000.00 monthly rent and the additional \$200.00 towards the past arrears, and a

Ten Day Notice to End Tenancy for Unpaid Rent was served on May 28, 2014 demanding payment was paid.

Both parties testified that the tenant made a rental payment to a third party, who is an agent of the landlord on June 6, 2014.

The tenant testified that the payment was comprised of cash in the amount of \$825.00 and a cheque from the Ministry for \$375.00. The tenant stated that a receipt was issued for the \$825.00 cash only, which did not include a receipt for the \$375.00 cheque. The tenant testified that the \$1,200.00 in arrears was paid in full as of June 6, 2014. The tenant feels that this fact should be sufficient to cancel the Ten Day Notice to End Tenancy for Unpaid Rent dated May 28, 2014.

However, the landlord's position is that the payment made by the tenant on June 6, 2014 was only \$825.00, comprised of a cheque for \$375.00 and \$450.00 in cash. The landlord received this information from a third party who did not attend the hearing, but provided a written statement.

In addition to the above, the landlord pointed out that the tenant did not pay the full rent owed for June and July 2014, and only made partial payments towards the rent. The landlord provided a ledger showing the tenant's account, copies of receipts and copies of communications. The landlord seeks an Order of Possession and monetary order for \$1,635.00 that has accrued to date.

The landlord testified that no additional rent increase was imposed on the tenant. According to the landlord, the tenant's \$1000.00 rent is still in effect, but the tenant was required to pay the extra \$200.00 to catch up on past arrears still owed.

Analysis:

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that there is no dispute about the fact that the tenant owed arrears of \$1,200.00 for rent on May 28, 2014 and received a 10-Day Notice to End Tenancy for Unpaid Rent on May 28, 2014.

I find that the tenant did pay the arrears on June 6, 2014. In the absence of sufficient evidence from the landlord, who was not present when the funds were paid, I accept the tenant's first-hand testimony that all of the outstanding arrears were paid in full in the amount of \$1,200.00, comprised of \$825.00 in cash and \$375.00 by cheque.

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.

Although the tenant did make the application to dispute the Notice within 5 days, the tenant failed to pay all of the outstanding rent until June 6, 2014 which fell beyond the 5-day deadline allowed under the Act to cancel the Notice.

I find that the Notice for unpaid rent is supported under the Act by the fact that the arrears were owed for May and still unpaid five days after the tenant received the 10-Day Notice to End Tenancy for Unpaid Rent. Therefore, I find that the criteria justifying an end to the tenancy under section 46 of the Act was met and the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the amount of rental arrears, While I accept the tenant's claim that she paid \$1,200.00 for the month of May 2014 on June 6, 2014, I also find that the rent arrears continued to accrue again in June and July 2014. I find that the total arrears outstanding at present are \$1,235.00, based on the records in evidence.

I find that the landlord is entitled to total monetary compensation of \$1,235.00 for accrued rental arrears.

In regard to the tenant's claim that the landlord imposed an additional rent increase, I find insufficient evidence has been submitted to support this allegation and this portion of the tenant's application must be dismissed.

Based on the evidence before me, I hereby issue an Order of Possession in favour of the landlord effective July 31, 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 hereby issue a monetary order in favour of the landlord, in the amount of \$1,235.00. This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application is dismissed in its entirety, without leave to reapply. Each party is responsible for the costs of their own applications.

Conclusion

The landlord is partly successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking cancel the Ten Day Notice to End Tenancy for Unpaid Rent and claiming that the landlord imposed an additional rent increase are dismissed without leave. The tenant's request for more time to file the application is found to be moot

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 23, 2014

Residential Tenancy Branch

