



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, OPR, OPC, MNDC, 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 July 2, 2014 and a One-Month Notice to End Tenancy for Cause issued on May 9, 2014, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

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 based on the 10-Day Notice to End Tenancy for Unpaid Rent?

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 on January 1, 2014 with rent set at \$750.00 and a security deposit of \$375.00 was paid. The landlord testified that, on June 1, 2014 when the tenant failed to pay the \$750.00 rent for June, after giving the tenant some time to pay, a Notice to End Tenancy was issued on July 2, 2014 and was served on the tenant in person. The landlord submitted into evidence a copy of the 10-Day Notice.

The landlord testified that the tenant also failed to pay \$750.00 for July and \$750.00 now owed for the month of August. The landlord is seeking a Monetary Order and an Order of Possession.

The tenant acknowledged that they did not pay rent in June 2014, but stated that the tenants had completed some work for the rent. The tenant stated that this was pursuant to a statement in the rental advertisement and a verbal arrangement between the parties. The tenant pointed out that the landlord had also agreed in writing to accept a reduced rent for the month of June and the tenant made reference to a communication submitted into evidence in which this matter is discussed.

The tenant testified that there were numerous problems and issues that arose affecting the value of their tenancy and the tenant had submitted evidence to support these allegations. The tenant stated that they are no longer residing on the premises and are in the process of removing the remainder of their possessions, but do not feel that they should have to pay the landlord the amount being claimed.

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.

Given that the tenancy is ending pursuant to the Ten Day Notice to End Tenancy for Unpaid Rent, I find that there is no need to make a determination with respect to the merits of the One-Month Notice to End Tenancy for Cause previously issued.

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

I find the defences put forward by the tenant with respect to the issues affecting the value of their tenancy, whether true or not, are not material considerations in the matter before me because this hearing only relates to the issue of whether the rent was paid.

I find that no application or cross application from the tenant is before me and this hearing today is only to deal with the landlord's application, not claims being made by the tenants I find that monetary claims put forth by the tenant must be dealt with by making their own application..

In regard to the tenant's position that there was a mutual arrangement between the parties to exchange work for rent, I make no findings. I base my determination in regard to the matter before me only on the Act and the written tenancy agreement in evidence.

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. I find that the reasons for the tenant's failure to pay are not relevant to the issue of whether or not the landlord's Ten Day Notice to End Tenancy for Unpaid Rent is valid and enforceable. (my emphasis)

Based on the evidence and testimony, I find that the landlord has established a total monetary claim of \$1,550.00, comprised of \$1,500.00 rental arrears for June and July 2014 and the \$50.00 cost of the application. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim, leaving a balance due to the landlord in the amount of \$1,175.00.

The landlord's claim for \$750.00 loss of rent for the month of August 2014, is dismissed with leave to reapply.

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 \$1,175.00. 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 partly 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. The landlord's claim for loss of rent for August is 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: August 07, 2014

Residential Tenancy Branch

