

Decision

Dispute Codes: OPC, MNR, MND, MNSD, O, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated March 9, 2011, and purporting to be effective April 15, 2011. The landlord was also seeking a monetary order for rent owed for April 2011, damages to the unit of \$1,000.00 and unpaid utilities of \$300.00.

Issue(s) to be Decided

The issues to be determined on the landlord's application based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause.
- Whether or not the landlord is entitled to a monetary order for rental arrears, utilities owed and damage to the unit.

The burden of proof is on the landlord.

Background and Evidence

The tenancy had originally started in July 2009, the current rent is \$1,300.00 and the tenant had paid \$650.00 deposit. The landlord testified that the tenant had been repeatedly late with rent and that is why the One Month Notice was served on the tenant.

With respect to the landlord's claim for rental arrears for April 2011, the landlord testified that when he made this application in March 2011, he anticipated that the tenant would likely be in arrears for the \$1,300.00 rent for April 2011 and this is precisely what did happen. The landlord had also anticipated \$1,000.00 damages to the unit would be left. With regard to utilities now owed, the landlord stated that he confirmed with the utility company that the tenant is currently in arrears for utilities. The total amount being sought for the claims was stated in the application as \$2,650.00.

The tenant acknowledged that she received the One Month Notice to End Tenancy for Cause and did not dispute it. The tenant also testified that the landlord had never served a Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for repeated late payment of rent.

Regardless of whether or not the merit of the One-Month Notice to End Tenancy for Cause was found sufficient to support a termination of the tenancy, the fact is that this tenant had failed to dispute the Notice by making her own application within the statutory 10-day deadline to do so. If a tenant who has received a notice under section 47 fails to make an application for dispute resolution to dispute the Notice, the Act states that the tenant:

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that, because the Notice was not disputed, I must grant the landlord an Order of Possession based on this Notice.

However, section 47(2) states that a notice under this section must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and; (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Although the stated effective date shown on the One Month Notice to End Tenancy for Cause was April 15, 2011, section 53 of the Act deems the effective date of a notice will automatically be changed to the earliest date in compliance with the Act, and in this instance I find that the earliest effective date for the Notice will be April 30, 2011.

With respect to the landlord's claim for rental arrears for April, I find that on March 24, 2011, when the landlord applied for dispute Resolution, the tenant was not yet in arrears for rent for April at that time and no prior notice was ever issued to notify the tenant about any claimed arrears.

In regard to the claim for utilities, I draw attention to section 46 (6) of the Act which states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. (my emphasis)

I find that the landlord did not submit a copy of the tenancy agreement showing the term relating to utility payments. I find that the landlord did not submit evidence that a written demand for utilities had ever been issued to the tenant more than 30 days prior to the hearing. In addition, no copies of the utility invoices were submitted into evidence to support the claim, nor had the landlord ever issued a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

With respect to the alleged damage to the unit being claimed by the landlord, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances. However, section 7(2) of the Act requires a landlord to take reasonable steps to minimize damages and losses. A tenant is also entitled to an opportunity to first repair any damages, beyond normal wear and tear, prior to the end of the tenancy.

Accordingly, I find that the landlord's monetary claims are all premature and must be dismissed.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective seven days after service. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord's monetary claims are premature and I dismiss them with leave to reapply in future. However, I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit of \$650.00 plus interest, leaving \$600.00 held in trust for the tenant. This must be administered in compliance with section 38 of the Act..

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: April, 2011.

Residential Tenancy Branch