



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated March 20, 2011, which was served in person to the tenant on March 20, 2009.

Despite being served by registered mail sent on July 12, 2011, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking an Order of Possession and monetary order for utilities owed and the issue to be determined is whether or not the landlord is entitled to compensation and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Background and Evidence

The tenancy began in August 2010 with rent set at \$800.00 and a security deposit of \$200.00 was paid.

The landlord testified that the tenant failed to pay utilities owed for the duration of the tenancy and a Ten Day Notice to End Tenancy for Unpaid Rent was finally issued. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy and copies of utility invoices. No copy of the tenancy agreement was submitted into evidence. The landlord testified that the tenant did not pay the arrears within 5 days and did not vacate the unit. The landlord is seeking an order of possession.

Analysis

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, the Act provides that, within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice

by making an application for dispute resolution. If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution 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 by that date.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and did not pay the rent within 5 days nor did the tenant dispute the Notice.

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

With respect to the claimed utilities I find that the payment of utilities would be considered a term in the tenancy agreement between the parties. However, no copy of the tenancy agreement was submitted into evidence to prove that the tenant would be required to pay utilities as part of the tenancy. Accordingly I find that the portion of the landlord's application relating to compensation for utilities must be dismissed.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. on Sunday, August 1, 2009. This order is final and binding. It must be served on the Respondent and if necessary may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be compensated for the \$50.00 cost of this application and may retain this amount from the tenant's security deposit.

The remainder of the landlord's application, including the claim for utilities, is hereby 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: August 10, 2011.

Residential Tenancy Branch