Dispute Resolution Services

DECISION

Dispute Codes   OPR, MNR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord presented a copy of a tenancy agreement which provided that the tenant was obligated to pay $2,000.00 in rent each month in advance on the 20th day of each month. The tenant did not dispute that these were the terms of the agreement.

The landlord provided copies of dishonoured cheques and chargeback statements showing that in the months of May and July 2011, the tenant's rent cheques were dishonoured by the bank and charged back to the landlord's account. The parties agreed that on August 19, 2011, the landlord served on the tenant a 10 day notice to end tenancy.

The landlord provided a copy of the tenant's rent cheque for the month of August and a bank chargeback statement for that month showing that the cheque had been dishonoured by the bank and charged back to the landlord's account. The landlord testified that the tenant did not pay rent on September 20, 2011.

The landlord seeks an order of possession based on the notice to end tenancy and a monetary order for $8,000.00 in unpaid rent.

The tenant acknowledged having received the notice to end tenancy but argued that it is fatally flawed because it listed the tenant's son as a tenant, identified the amount of rental arrears as $6,000.00 and was not signed or dated by the landlord. The tenant

argued that because it was given to him on August 19, the day before rent was due, the total arrears should not have included the $2,000.00 payable on August 20.

I specifically asked the tenant for his position on the landlord's evidence that the cheques offered in payment for rent due on the 20th of May, July and August were dishonoured by the bank. The tenant claimed that because the notice to end tenancy was faulty, he objected to the hearing based on the faulty notice. The tenant chose not to comment on whether any rent was owed to the landlord. I explained to the tenant that the landlord had made 2 claims, one for an order of possession and one for a monetary order and while the claim for an order of possession was based on the notice to end tenancy and could fail if the notice was found fatally defective, the claim for a monetary order was not based on the notice. The tenant maintained his position and chose not to comment on the landlord's monetary claim.

Analysis

I find that the notice to end tenancy does not comply with the requirements set out in section 52 of the Act. The notice included an incorrect respondent, it included a demand for rent which was not yet due and it was not signed or dated by the landlord. I dismiss the landlord's claim for an order of possession and I set aside the notice to end tenancy.

I find compelling the landlord's evidence that the tenant is $8,000.00 in rental arrears, having failed to make the payments which were due on May 20, July 20, August 20, and September 20 and as the tenant did not dispute the landlord's allegation that rent was unpaid for those periods, I find that the tenant did not make those payments. I find that the landlord is entitled to recover the rental arrears and I grant the landlord a monetary order under section 67 for $8,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim for an order of possession is dismissed. The landlord is granted a monetary award for $8,000.00.

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: October 12, 2011

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Residential Tenancy Branch