



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated May 4, 2012, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

Background and Evidence

The landlord testified that the tenancy started in August 2010 and current rent is \$886.55 per month. A security deposit of \$425.00 was paid. The landlord testified that the tenant failed to pay \$886.55 rent due on May 1, 2012. A Ten Day Notice to End Tenancy for Unpaid Rent was issued on May 4, 2012 and served on the tenant by registered mail.

The landlord testified that the tenant failed to satisfy the arrears within the five-day deadline under the Act, so an application for dispute resolution was filed seeking an order of possession based on the Notice. The landlord testified that the tenant also failed to pay \$886.55 rent due on June 1, 2012.

Based on the Notice, the landlord has requested a monetary order for \$1,773.10 for rental arrears and an Order of Possession.

The tenant did not dispute that the rent owed was not paid on May 1, 2012 or thereafter and that rental arrears are still owed. The tenant confirmed receipt of the Ten Day Notice to End Tenancy for Unpaid Rent and acknowledged that the tenant did not file to dispute the Notice. The tenant testified that she suffered a financial set-back, but now has all of the funds owed and can pay the outstanding arrears in full.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. The reason rent was not paid is irrelevant to this dispute.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I find that the tenant did neither.

I find that the Ten-day Notice also included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted. In this instance I find that the tenant was in arrears at the time the Notice was served on June 2, 2011 and the tenant did not pay the arrears within 5 days. In fact, the tenant failed to pay rent for the following month as well.

In any case, section 46(5) of the Act provides that, if a tenant does not pay the rent 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.

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

I find that the landlord has established a total monetary claim of \$1,823.10 comprised of \$1,773.10 rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim leaving a balance due of \$1,398.10.

Conclusion

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 an order under section 67 for \$1,398.10. 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.

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: June 11, 2012.

Residential Tenancy Branch