



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, OPC, 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 July 1, 2012 and a monetary order for rent owed for the month of July 2012.

Despite being served by registered mail sent on July 10, 2012, the respondent did not appear.

At the outset of the hearing the landlord testified that the tenant had vacated the unit and therefore the Order of Possession was no longer required.

Issue(s) to be Decided

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

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 landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 1, 2012 with effective date of July 11, 2012. The landlord testified that the tenancy began in June 2012 and a security deposit of \$450.00 was paid.

The landlord submitted into evidence a copy of a signed tenancy agreement showing that the tenancy began on June 1, 2012. And was on a month-to-month basis. The landlord pointed out that rent was properly due on the 31st day of each month.

The landlord testified that the tenant failed to pay \$900.00 rent properly due on June 31, 2012 and the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent and served it on July 1, 2012.

At the top of the Ten Day Notice to End Tenancy for Unpaid Rent in the applicable space, the landlord had indicated, "*You have failed to pay rent in the amount of*

\$900.00 that was due on 01/July/2012". A second copy of a Ten Day Notice to End Tenancy for Unpaid Rent was also included in evidence and indicated that the tenant failed to pay \$900.00 rent that was due on "30/June/2012".

The landlord testified that the tenant vacated the unit shortly after the Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant's possessions remained for approximately 2 weeks before he returned to finally remove his property.

The landlord is seeking a monetary order of \$900.00 for rent and the \$50.00 cost of the application.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person on July 1, 2012.

I find that one of the 2 copies of the Notice was signed on July 1, 2012, and at the top of the form it was shown to be issued for unpaid rent due on "01/July/2012" while the other showed the due date for rent as "30/June/2012".

The landlord argued that this tenant was already in arrears on July 1, 2012, because, according to the terms in the tenancy agreement, it states at paragraph 3(a) that:

"Payment of Rent:

The tenant will pay the rent of \$900.00 each month to the landlord on the first day of the rental period which falls on 31 day....".

I find that, if I accept the day that the tenancy was shown to begin, (that being June 1, 2012), then the first day of the rental period could not be the 31st day of the month. According to the agreement and the Act, the first day of the rental period that rent is due would have to be the first day of each month consistent with the agreement and the agreement shows that this tenancy began on the first day of June. In fact, the first day of the rental period would not be the last day of the month unless this tenancy actually started on May 31, 2012, the last day of the month.

The importance of this fact, is the impact it has on whether or not the tenant was in arrears at the time the Ten Day Notice to End Tenancy for Unpaid Rent was signed.

In regard to the date the Notice was signed by the landlord, neither the Act nor the Residential Tenancy Rules of Procedure grant a dispute resolution officer any authority to retro-actively correct or alter the date that a Notice was issued.

That being said, I find that I can accept the landlord's testimony that the first day of the tenancy was not June 1, 2012, despite that particular date was shown on the agreement as the start date. I accept that the tenancy began on the last day of the month, May 31, 2012 and that the rent would therefore be due on the last day of each month thereafter, which would constitute the first day of the rental period. In support of this conclusion is the fact that the tenancy agreement was signed by the parties on May 29, 2012.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent is therefore valid and that the tenant is in arrears for \$900.00 rent properly due on June 30, 2012. The landlord is also entitled to the \$50.00 cost of the application for a total monetary claim of \$950.00.

I order that the landlord retain the tenant's security deposit of \$450.00 in partial satisfaction of the claim leaving \$500.00 still owed to the landlord.

Conclusion

I hereby grant the Landlord an order under section 67 for \$500.00. This order must be served on the Respondent and is final and binding. If necessary it 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: July 30, 2012.

Residential Tenancy Branch