



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, 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, January 11, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 24, 2013, the tenant did not appear.

Issue(s) to be Decided

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 testified that the tenancy began on July 1, 2012, with a monthly rental rate of \$1,475.00, at which time the tenant paid a security deposit of \$737.50. The landlord testified that the tenant fell into arrears for rent and accrued late fees under the tenancy agreement.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated January 11, 2013 with effective date of January 19, 2013. According to the 10-Day Notice, by January 11, 2013, the tenant owed \$1,625.00.

Also in evidence was a copy of a receipt for payment of \$480.00, dated February 1, 2013, for use and occupancy. Additional evidence included proof of service, a copy of the tenancy agreement and a written statement of charges indicating that, in addition to rent of \$475.00 owed for December 2012 and \$1,475.00 owed for January 2013, the tenant was also responsible for late fees of \$42.00 for November 2012, \$62.00 late fee for December 2012, and a \$22.00 late fee for January 2013. The landlord was also

claiming past arbitration fees and postage from a previous hearing and claiming \$2,128.68 up to the end of January 2013.

However, during the hearing, the agent of the landlord testified that the tenant was now in arrears for \$1,475.00 for January rent and \$1,475.00 for February rent.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the arrears and did not apply to dispute the Notice and 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 above facts I find that the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I find that the amounts being claimed are unclear and contradictory.

If I accept the original claim shown on the 10-Day Notice, as of January 11, 2013 the tenant owed \$1,628.68. A written statement signed by the tenant confirms this. However, after that date, the tenant paid \$480.00 on February 1, 2013, which would reduce the January 2013 balance to \$1,148.68. As of February 1, 2013, the \$1,475.00 rent for February 2013 would be due and the total arrears would therefore be \$2,623.68 as of the date of this hearing.

In regard to the landlord's monetary claims for late payment fees, I find that section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 per month for late fees.

I find that the tenancy agreement submitted into evidence by the landlord contains a non-compliant term that imposes late payment fees that are in excess to the \$25.00 per month permitted under section 7 of the Act.

Section 5 of the Act states that parties are not permitted to avoid or contract out of the Act or the regulations, and that any attempt to avoid or contract out of the Act or the regulations is of no effect. Section 6(3)(a) of the Act also provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. Accordingly I find that the term in the tenancy agreement imposing late payment fees is not enforceable and therefore any portion of the landlord's claim applicable to past late fees would need to be dismissed.

I am prepared to accept the landlord's testimony that none of the arrears being claimed for January 2013 and February 2013 included any accrued charges for noncompliant late fees.

Accordingly, based on the data shown on the Ten Day Notice to End Tenancy for Unpaid Rent indicating that \$1,628.68 was outstanding and considering the receipt for \$480.00 payment on February 1, 2013, I accept that the landlord has established a total monetary claim of \$2,673.68. This is comprised of \$1,148.68 accrued rental arrears for January, \$1,475.00 arrears for February 2013 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$737.50 in partial satisfaction of the claim, leaving a balance still due of \$1,936.18.

I hereby grant the Landlord a monetary order under section 67 for \$1,936.18. 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.

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 is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord's application is partially successful and the landlord is granted a monetary order for a portion of the claim for rental arrears and an Order of Possession.

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: February 12, 2013

Residential Tenancy Branch