



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes

OPR, MNR, MNSD, CNR, MNDC, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- an order to cancel the notice to end tenancy for rent;
- a monetary order for \$25,000, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?

- Is the landlord entitled to a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Issues to be decided: Tenant's Application

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for Unpaid Rent?
- Is the tenant entitled to monetary compensation?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on September 1, 2012 and the rent was \$3,000.00, but was recently abated to the current rate of \$2,250.00 per month for the duration of the tenancy. The rent is payable on the 1st day of each month. A security deposit of \$1,500.00 was paid.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent, dated June 11, 2013, was placed in evidence. The landlord testified that the tenant failed to pay rent owed for June 2013 and was personally served with the Ten Day Notice. The landlord testified that the tenant did not pay the rental arrears and did not vacate the unit. The landlord is seeking an Order of Possession based on the Notice.

The landlord testified that the tenant also failed to pay the \$2,250.00 rent owed for the month of July 2013 and the arrears now total \$4,500.00, which is being claimed by the landlord.

The tenant's testimony confirmed that the tenant did not pay the rent for June or July 2013. The tenant testified that he did not know who to pay the rent to, because the property is undergoing a foreclosure and pending sale.

The tenant is requesting that the Ten-Day Notice be cancelled and that the landlord be identified so that he can pay the rent without fear of submitting the funds to the wrong agent of the landlord.

The landlord testified that they are named on the tenancy agreement as agent of the landlord and there has been no change of this. According to the landlord, no official notification was served on the tenant permitting the tenant to withhold the rent.

A copy of the tenancy agreement in evidence confirmed that the agreement was signed by this landlord and the tenant.

In regard to the tenant's monetary claim, the tenant testified that the legal proceedings, showings, various people attending the property and the pending changes are

disruptions that have interfered with the tenancy and caused stress and inconvenience to the tenant. The tenant testified that their tenancy is in jeopardy and their rights as paying tenants have been impinged by the landlord.

The tenant feels that they are entitled to be compensated for enduring the circumstances to which they have been subjected. The tenant acknowledged that the landlord has already reduced their rent by \$750.00 per month due to the current situation, but the tenant feels this is not sufficient.

Analysis, Landlord's Application:

I find that a landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears. I find that there is no dispute about the fact that the tenant failed to pay the rent for June 2013 and did not pay the outstanding arrears within 5 days of receiving the Notice. Payment of the rent within five days of receiving the Notice would have served to cancel the Notice. In this instance the debt was not paid.

Therefore I find that the Ten-Day Notice still remains in effect. I find that the Notice for unpaid rent is supported under the Act. Therefore I find that this Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the \$2,250.00 rent for June nor for July 2013, when these payments were due and currently owes arrears in the amount of \$4,500.00.

I find that the landlord is entitled to compensation of \$4,550.00, comprised of \$4,500.00 accrued rental arrears and the \$50.00 cost of the application.

Analysis, Tenant's Application

With respect to the tenant's monetary claim, I find that an Applicant's right to claim damages from another party, is found under section 7 of the Act, which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate

the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists,
- [2] Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
- [3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
- [4] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that the tenant has not sufficiently proven that the tenant suffered a monetary loss because of the landlord's violation of the Act. The tenant's claim has therefore failed to satisfy element 2 of the test for damages. Accordingly, I find that the tenant's monetary claim must be dismissed.

Based on the evidence before me, I hereby grant 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.

As I have found that the landlord is entitled to be reimbursed \$4,550.00, I order that the landlord retain the tenant's \$1,500.00 security deposit in partial satisfaction of the claim, and hereby grant a monetary order in favour of the landlord for the remainder, in the amount of \$3,050.00.

This order must be served on the tenant and, if unpaid, may be filed in Small Claims Court and enforced as an order of that court.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent cancelled and the tenant's monetary claim are both 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: July 18, 2013

Residential Tenancy Branch

