



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on September 15, 2007, with monthly rent in the amount of \$1000 payable in advance on the 15th day of each month. The tenants failed to pay the rent due on August 15, 2008, and on August 24, 2008 the landlord served the tenants with a notice to end tenancy for non-payment of rent. The tenants further failed to pay rent due on September 15, 2008. The tenants applied to cancel the notice to end tenancy and the matter was heard on September 22, 2008. The tenants were unsuccessful in their application. However, the landlord did not make a request in that hearing for an order of possession. The landlord has now applies for an order of possession pursuant to the notice to end tenancy. The evidence of the landlord is that the tenants have not made any payment toward outstanding rent, and the landlord therefore claims \$2000 in outstanding rent for the rental periods of August 15 to September 14, 2008 and September 15 to October 14, 2008. The landlord also seeks \$1000 for lost revenue for the period of October 15 to November 14, 2008.

The evidence of the tenants is that on or about October 14, 2008 one of the two tenants attended at the landlord's house and paid \$3000 in cash for outstanding rent to November 14, 2008. A witness for the tenants gave testimony that she drove the tenant to the landlord's house, and saw the tenant pay the landlord the rent. The tenant then returned to the witness's car and told her that he had paid the rent but the landlord refused to issue a receipt. The testimony of the tenants is that they had to borrow \$1000 each from their parents, and save another \$1000 from the female tenant's paycheques in order to make the \$3000 rent payment on that date. The landlord's response is that the tenants have not made any payment on the outstanding rent. The landlord acknowledges not issuing receipts to the tenants on a regular basis.

Analysis

I find that I prefer the evidence of the tenants and their witness as more credible than that of the landlord. I therefore find that the tenants did make a rental payment of \$3000 on or about October 14, 2008. Because the landlord did not issue a receipt indicating that the rental payment was accepted for use and occupancy only, the landlord has effectively reinstated the tenancy. Therefore, the landlord is not entitled to an order of possession or a monetary order.

Conclusion

The landlord's application is dismissed, and the tenancy continues. The landlord is not entitled to recovery of their filing fee.

Dated October 28, 2008.