



Dispute Resolution Services

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

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 6, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although both were served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 21, 2009, the tenants did not appear.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. At the outset of the hearing, the landlord advised that the tenant had paid outstanding rent in full as of February 28, 2009 and was issued a receipt for use and occupation only. Therefore there is not monetary claim being sought.

The remaining issue to be determined based on the testimony and the evidence is:

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

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated January 6, 2009 with effective date of January 16, 2009, a copy of a letter to the tenant dated January 6, 2009 regarding the rental arrears, the tenancy agreement, a copy of a receipt for payment indicating that the funds were accepted "for use and occupancy only" and two registered mail receipts as proof of service. The landlord testified that the tenancy began on July 1, 2003, at which time the tenant paid a security deposit of \$492.50. The landlord testified that when the tenant failed to pay rent for the month of January 2009, due on the first day of the month under the tenancy agreement, a Notice to End tenancy was issued and the tenant then paid \$220.00 on January 9, 2009 and \$2,270.00 on February 28, 2009 and that these payments were accepted for use and occupancy only and did not reinstate the tenancy. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession..

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 on January 6, 2009. The tenant failed to pay the outstanding rent within 5 days of receiving the Notice 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.

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.

March 2009

Date of Decision

Dispute Resolution Officer