

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 26, 2008. Rent in the amount of \$1365 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$662.50. The tenant failed to pay rent in the month of April 2009 and on April 03, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant eventually paid part of April's rent. The tenant further failed to pay rent on time in the month of May 2009. The tenant eventually paid all rental arrears by May 18, 2009 and all payments were accepted as for use and occupancy only.

The landlord's testimony is that it is the landlord's preference to maintain the tenancy, but at the same time it is unacceptable to the landlord for the tenant to contravene the

material term of the tenancy agreement and not pay the rent when it is due in its entirety. The landlord has not determined if the tenancy has ended and seeks an Order of Possession in the event the tenants are again late with the rent.

The landlord also seeks the filing fee of **\$50**.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant did not pay the outstanding rent and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. However, I find the landlord, via her testimony, has reinstated the tenancy, and I am unable to grant the landlord an open - ended Order of Possession to be used in the event the tenants are again late with their rent. If necessary, the landlord, has available to them the ability to issue another Notice to End Tenancy for Unpaid Rent (10 day Notice), or, if appropriate a Notice to End Tenancy for Cause, *for repeated late payment of rent*.

Based on the above facts I decline to issue the landlord an Order of Possession. However, the tenant should seriously appreciate that their conduct placed them perilously close to being evicted.

As for the monetary order, I find the landlord's position in this matter was key in arriving at a resolve mutual to both parties to this application, so is therefore entitled to recovery of the \$50 filing fee.

Conclusion

The tenancy is re-instated and, for now, continues.

I order that the landlord may retain the amount of **\$50** for the filing fee, from the tenant's security deposit.

Dated May 25, 2009.