



Dispute Resolution Services

Residential Tenancy Branch
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 June 2, 2009, 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 in person on July 17, 2009, the tenant did not appear.

At the outset of the hearing, the landlord advised that the tenant had recently paid all arrears in full and the monetary order was not being sought. However the landlord hoped to obtain an order that the landlord be reimbursed the \$50.00 paid for the application. The landlord was still seeking an Order of Possession.

Preliminary issue

The landlord testified that the tenant paid all of the outstanding arrears in full by certified cheque. The landlord testified that no receipt was given stating that the payment did not serve to reinstate the tenancy between the parties or that the payment was being accepted "for use and occupancy only". The landlord testified that no conversation transpired on this subject between the two parties and it was never clearly stated to the tenant that, despite their payment, the tenancy was not reinstated. I find that, while the landlord may not have intended on reinstating the tenancy, the tenant, having no information otherwise, may have presumed that their payment functioned to erase the Notice..

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

- the receipt shows the money was received for use and occupation only.
- the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties indicates the intention.

In this instance I find that the landlord did not issue a receipt nor advise the tenants upon accepting the payment that this was for “use and occupancy only”. I also find that the conduct of the tenants in not attending the hearing after paying the arrears appears to confirm that they believed that the landlord had withdrawn the monetary order and the order of possession as the tenancy was reinstated.

Given the above, I find that the tenancy was reinstated. The monetary portion of the landlord’s application was withdrawn and the Order of Possession must be dismissed without leave due to the parties reinstatement of the tenancy.

Conclusion

I dismiss the landlord’s application as resolved between the parties. I hereby order that the landlord is entitled to be reimbursed \$50.00 by the tenant for the cost of the application. This order must be served on the Respondent and may be filed in Provincial Court (Small Claims) and enforced as an order of that Court.

July 2009

Date of Decision

Dispute Resolution Officer