



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided evidence that the landlord served the tenant with notification of this hearing by registered mail sent January 5, 2009. The landlord also provided evidence that the tenant received the registered mail. Having been satisfied that the tenant was sufficiently served with notification of the hearing, I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the tenancy been reinstated?
3. Is the landlord entitled to a Monetary Order?
4. Award of the filing fee.

Background and Evidence

The landlord testified as follows. The tenancy commenced April 1, 2008. The tenant is required to pay rent of \$450.00 on the 1st day of every month. There is no written tenancy agreement. The tenant started paying rent late in December 2008 and since January 2009 the tenant has been in rental arrears. On December 9, 2009 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the rental unit door indicating rent of \$710.00 was outstanding as of December 1, 2009. The Notice

had an effective date of December 20, 2009. On January 6, 2010 the tenant brought \$1,050.00 to the landlord's office and gave it to the landlord's secretary. The landlord's secretary issued a receipt to the tenant indicating \$110.00 in rent was still outstanding.

Upon enquiry, the landlord confirmed that he had discussions with the tenant about the tenant catching up on his rental arrears but did not have specific discussions with the tenant that rent payments made after the 1st of the month would no longer be acceptable practice. The landlord also confirmed that the landlord did not communicate to the tenant that acceptance of the payment on January 6, 2010 would not reinstate the tenancy. The landlord explained that the tenant does not have a telephone and the rental unit is some distance away from the landlord's location.

The landlord also stated that utilities are included in the tenant's rent and that the landlord needs to collect rent on the 1st day of the month and cannot accommodate late payments. The landlord expressed concern that the tenant would not pay the February 2010 rent on time.

As evidence for the hearing, the landlord provided a copy of the Notice to End Tenancy, the rental receipts issued to the tenant from March 2008 through November 2009, the registered mail receipt and confirmation from the landlord's staff member that \$1,050.00 had been received from the tenant on January 6, 2010.

Analysis

Upon review of the evidence before me, I am satisfied the landlord is still owed \$110.00 in rent as of today's date, including rent for January 2010. **I hereby order the tenant to pay the landlord \$110.00 forthwith.** I also provide the landlord with a Monetary Order in the amount of \$110.00 to ensure payment.

Where a tenant is served with a *10 Day Notice to End Tenancy for Unpaid Rent*, the tenant has five days to pay the rent or dispute the Notice within five days of receiving

the Notice. Where a tenant does not pay or dispute the Notice the tenant is presumed to have accepted that the tenancy will end on the effective date of the Notice. Since the Notice was posted on the tenant's door on December 9, 2009 it is deemed to be served three days later and the effective date of the Notice is automatically changed to read December 22, 2009.

Where a landlord accepts payment of rent after the tenancy ended the question of reinstatement of the tenancy arises. Intent of the parties can be established by:

- Whether the receipt issued shows the money was accepted for use and occupation only;
- Whether the landlord specifically informed the tenant that the money would be for use and occupancy only; and,
- The conduct of the parties.

In this case, the tenant paid the outstanding rent and a portion of rent for the month of January 2010 after the tenancy legally ended. In the absence of communication to the tenant that the payment was being accepted for use and occupation only and since the parties have a history of paying and accepting late payments, it is reasonable to conclude that the parties acted in such a way as to reinstate the tenancy.

In light of the above, I find that the tenancy continues and I do not provide the landlord with an Order of Possession.

This decision also serves a written notice to the tenant that upon receipt of this decision the tenant is fully aware that the landlord intends to enforce the terms of the tenancy agreement and that failure of the tenant to pay rent in full on the 1st day of each month will be a violation of the tenancy agreement which may cause the tenancy to end.

Conclusion

I find the tenancy has been reinstated and I do not provide an Order of Possession to the landlord. The landlord is entitled to recover unpaid rent of \$110.00 from the tenant for the month of January 2010 and I provide a Monetary Order to the landlord in this amount. The tenant is also informed that rent must be paid on the 1st day of every month as a term of the tenancy agreement and that failure to do so may be grounds to end the tenancy.

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: January 29, 2010.

Dispute Resolution Officer