



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 February 11, 2010, 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 by registered mail, the tenant did not appear.

At the outset of the hearing, the landlord advised that since filing, the tenant paid rent for March 2010 and rent for April 2010 but the accumulated arrears remained at \$1,729.00. The landlord was still seeking an Order of Possession.

Preliminary issue

As the tenant had paid rent since being issued the Notice and after the landlord had filed the application, the issue of whether or not the tenancy was reinstated arose. The landlord testified that the receipt provided did not contain a statement clarifying that the landlord's acceptance of 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 there was no record of any discussion on this subject between the two parties and it appears that it was never clearly stated to the tenant that, despite the payments, the tenancy was not being reinstated and the landlord was still going to pursue the Order of

Possession to end the tenancy along with a monetary order for the unpaid portion of the arrears.

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.

I find that, while the landlord did not intend to reinstate this tenancy, the tenant, having insufficient clarification, may have presumed otherwise and may have believed that the payment functioned to continue the tenancy.

In this instance I find that the landlord failed to give a receipt showing the tenant the payment was for “use and occupancy only” and that the conduct of the tenant by not attending the hearing appeared to confirm that a perception may have been created that the order of possession was not going to be pursued. Given the above, I find that one party may have considered the tenancy to be reinstated and the landlord’s application must therefore be dismissed.

Conclusion

I hereby dismiss the landlord’s application without leave. However, I order that the landlord is still 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.

April 2010

Date of Decision

Dispute Resolution Officer