

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed for compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord conducted service of the hearing documents by sending one envelope addressed to both Tenants, via registered mail on May 28, 2010. The Landlord advised the Canada Post website confirmed the envelope was delivered on June 15, 2010 however it did not display the name of the person who signed for the envelope.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed that this month to month tenancy began on November 1, 2009. Rent is payable on the first of each month in the amount of \$1,675.00 and the Tenants paid a security deposit of \$497.50 on September 30, 2004, when they occupied a different rental unit.

The Landlord confirmed that on May 6, 2010, he posted a 10 Day Notice to End Tenancy to the Tenants' door for \$3,021.34 in unpaid rent. On May 14, 2010, the Tenants made two payments of \$1,000.00 towards their unpaid rent after which the Landlord agreed to enter into a payment plan with the Tenants. The Landlord requested that the Tenants return at a later date once they figured out a payment plan that would work for them but he has not heard back from the Tenants and rent remains unpaid.

Analysis

All of the testimony and documentary evidence was carefully considered

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. In this case the Landlord not only accepted rent after the Notice was issued the Landlord also entered into an agreement for the Tenants to create a payment plan. Based on the aforementioned I find the Landlord's actions of accepting rent, without issuing a receipt for use and occupancy only, and agreeing to enter into a payment plan after the issuance of the Notice, has created an implied waiver of the Notice thus reinstating the tenancy.

Having found above, that the 10 Day Notice has been waived, I hereby dismiss the Landlord's application.

The Landlord has not been successful with his application, therefore I decline to award recovery of the filing fee.

Conclusion

The 10 Day Notice to End Tenancy dated May 6, 2010, is HEREBY CANCELLED and is of no force or effect.

The Landlord's application is hereby dismissed, without leave to reapply.

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: July 15, 2010.

Dispute Resolution Officer