



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in payment of those amounts.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This tenancy started on November 26, 2008. Rent is \$466.00 per month payable in advance on the 1st day of each month.

The Landlord said that the Tenant did not pay rent when it was due for July 2010 and as a result on July 2, 2010 he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2010. The Landlord said he received a letter from the Tenant dated July 5, 2010 in which the Tenant said he had paid \$225.00 and would pay the balance on July 17, 2010. The Landlord said the Tenant did not pay \$225.00 but instead wanted to apply the security deposit to the rent arrears, however the Landlord did not agree to this arrangement. The Landlord said the Tenant paid July's rent on or about August 8, 2010 but was issued a receipt dated July 1, 2010 in error. The Landlord admitted that there are currently no rent arrears.

The Tenant admitted that he paid rent for July 2010 on or about August 8, 2010 but said he thought he did not have to pay rent for July and August. In particular, the Tenant said he received a 2 Month Notice to End Tenancy for Landlords' Use of Property at the end of June which was to take effect on September 1, 2010. The Tenant said the Landlord told him that he would receive 2 months free rent if he moved out at that time. The Tenant admitted that once he received the 10 Day Notice, he realized that he had made a mistake but he did not have the money for the rent that month (because he bought a computer) and had to pay it in August 2010. The Tenant said he spoke to the Landlord after he got the 10 day Notice and told the Landlord to keep the security

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deposit and assumed he could pay the Landlord the balance when he got the money. The Tenant also claimed that at this time he told the Landlord that he was having a hard time finding other suitable accommodations and the Landlord told him he could stay until the end of December 2010. The Tenant also argued that he believed the Landlord agreed he could stay until the end of December 2010 because the Landlord signed a Mutual Agreement to End the Tenancy to that effect in mid-July, 2010 and accepted his late rent payment for July on August 8, 2010.

The Landlord admitted that he gave the Tenant a 2 Month Notice but denied that he told the Tenant he would get two months free rent. The Landlord also admitted that he told the Tenant he would extend the effective date of the 2 Month Notice to December 31, 2010 but said this was dependent on the Tenant paying his rent on time.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. The Tenant received the Notice to End Tenancy on July 2, 2010. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than July 7, 2010. I find that the Tenant did not pay the overdue rent within 5 days and did not apply for dispute resolution.

At the hearing of this matter, I initially advised the Parties that the Landlord appeared to have grounds to end the tenancy under s. 46(5) of the Act and that the Landlord would receive an Order of Possession on those grounds. However, having had an opportunity to review the evidence further following the hearing, it became apparent that the Tenant had raised a legitimate defence that the Landlord had reinstated the tenancy by entering into a Mutual Agreement to End the Tenancy after the effective date of the 10 Day Notice.

At common law, there is a rebuttable presumption that a Landlord has reinstated a tenancy if he accepts rent payments after the effective date of a Notice to End Tenancy. In this case, the Tenant said that in mid-July, 2010 he and the Landlord entered into a Mutual Agreement to End the Tenancy effective December 31, 2010 which was **after** the effective date of the 10 Day Notice to End Tenancy (July 12, 2010). The Tenant also said that the Landlord accepted rent payments from him for July, August and September 2010 after the effective date of the 10 day Notice without issuing a receipt



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for “use and occupancy only.” In the circumstances, I find that the Landlord did reinstate the tenancy after the effective date of the 10 Day Notice to End Tenancy.

As a result, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled and the Landlord’s application for an Order of Possession is dismissed without leave to reapply. As there are no rent arrears, the Landlord’s application for unpaid rent, to recover the filing fee and to keep the Tenant’s security deposit are also dismissed without leave to reapply.

Conclusion

The Landlord’s application is 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: September 22, 2010.

Dispute Resolution Officer