



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were mailed to the Tenant at the rental unit, by registered mail, on August 19, 2010. The Landlord's agent provided the tracking number of the registered mail documents.

I am satisfied that the Tenant was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issue(s) to be Decided

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord's agent provided the evidence:

The Landlord testified that the 10 day Notice to End Tenancy for Unpaid Rent issued August 4, 2010 (the "Notice"), was posted to the Tenant's door at the rental unit on

August 4, 2010. A copy of the Notice was entered in evidence.

The tenancy began on September 1, 2001. A copy of the tenancy agreement was entered in evidence. The Tenant paid a security deposit in the amount of \$492.50 on August 31, 2001. Monthly rent is subsidized. The market value for the rental unit is \$1,149.00. At the time the Notice was issued, the monthly subsidized rent was \$409.00. Current monthly rent, effective September 1, 2010, is \$411.00. Rent is due on the first day of each month. The Tenant remains in the rental unit.

The Tenant paid the Landlord August's rent in full on August 23, 2010. The Landlord provided the Tenant with a letter explaining that the Landlord had accepted the rent for "use and occupancy only". The Landlord did not reinstate the tenancy.

The Tenant paid September's rent late in full, on September 15, 2010. The Landlord's agent was away on holidays and did not advise the Tenant that rent was accepted for "use and occupancy only".

Analysis

I find that the Landlord reinstated the tenancy on September 15, 2010, by accepting rent from the Tenant. Therefore, I dismiss the Landlord's application for an Order of Possession.

Rent has been paid in full and the Landlord is not entitled to a Monetary Order.

The Landlord has not been successful in its application and is not entitled to recover the filing fee in the amount of \$50.00 from the Tenant.

The Tenant is cautioned that rent is due on the first day of each month. Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1) A tenant **must** pay rent **when it is due** under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(emphasis added)

Conclusion

The Landlord's application is dismissed. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: October 06, 2010.
