

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The caretaker provided affirmed testimony that on November 13, 2010, at the rental unit, she personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing. Service occurred in the morning.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and damages?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of 1,100.00 by the first day of each month. The tenant paid a security deposit of \$550.00.

The landlord stated that on November 2, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 12, 2010, was served by posting to the door of the rental unit by the caretaker. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 November rent plus late fees within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that the tenant paid all rent and fees due on the fifth day after the Notice was deemed served; November 10, 2010. A receipt was issued to the tenant and the tenancy was reinstated. The landlord has issued the tenant a subsequent Notice in relation to December rent owed.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on November 5, 2010. The tenant had 5 days to either pay the rent or submit an application disputing the Notice; she paid the rent on the fifth day, as provided under Section 46 of the Act.

Therefore, the Notice issued on November 2, 2010, is of no force or effect and I find that this application is dismissed. The landlord has reinstated the tenancy.

In relation to any December rent that may be outstanding; as the tenant paid the rent owed on the November Notice issued and, at the time of this hearing I could not determine if she had paid December rent owed within the time required by the December Notice issued; I have not considered a claim for December rent.

The landlord is at liberty to submit a future application if she believes the tenant has breached the Act.

Conclusion

The application is dismissed.

The tenancy has been reinstated as the tenant paid rent owed within 5 days of service of the Notice ending 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: December 06, 2010.

Dispute Resolution Officer