



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order 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 on November 30, 2010, by posting on the door, the Tenant did not appear. I am satisfied that the Tenant was sufficiently served for the hearing under the Act.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") by the Landlord's Agent on November 18, 2010, listing the amount of \$1,700.00 for November rent. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord's Application claimed the amount of \$3,500.00 as a monetary claim, including the filing fee of \$50.00 and the late fees of \$50.00, but since service of the Notice of Hearing, the Landlord's Agent testified that the Tenant has paid \$1,700.00 on December 1, 2010, and \$1,750.00 on December 8, 2010. The Landlord's Agent testified that the Tenant was issued a receipt with the words "For Use and Occupancy Only for Unit 201" upon receipt of the December 8, 2010, payment, but was issued no receipt for the December 1 payment.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not pay the outstanding rent or apply to dispute the Notice within 5 days and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

However, I find that the testimony supports that the Landlord later reinstated the tenancy, by implied waiver, when the Tenant paid the November rent in full on December 1, 2010, and the Landlord failed to issue a receipt "For Use and Occupancy Only" until after the additional payment of rent on December 8, 2010.

As provided for in the *Residential Tenancy Policy Guideline #11*, when a landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

I find the Notice to End Tenancy was cancelled through the actions of the Landlord.

Therefore, the Notice is cancelled and is of no force or effect and the tenancy will continue until ended in accordance with the Act.

The Landlord's Application is **dismissed**; therefore the Landlord is not entitled to recover the filing fee.

Conclusion

The Landlord's Notice to End Tenancy dated on or before November 18, 2010, is cancelled and is of no force or effect and the tenancy will continue until ended in accordance with the *Act*.

The Landlord's Application is dismissed.

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 15, 2010.

Dispute Resolution Officer