

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The landlord participated in the conference call hearing but the tenants did not. The landlord presented evidence that the tenants were served with the application for dispute resolution. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

On November 5, 2010 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord's agent testified that they had received 3 rent payments from the ministry since service of the November 5, 2010 10 Day Notice for Unpaid Rent and that each rent payment was \$385.00 for a total of \$1155.00. The landlord did not provide the tenants with a receipt stating 'for use and occupancy only and does not reinstate the tenancy' for the rent payments received. The landlord's agent stated that the tenants have not paid January 2011 rent.

Analysis

Based on the documentary evidence and testimony I find that the tenants were properly served with a notice to end tenancy for non-payment of rent. The tenants did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

However as the landlord accepted rent after the date of the notice and did not provide the tenant's with receipts noting 'for use and occupancy only and does not reinstate the tenancy' and had no proof that payment was accepted for use and occupancy only; the landlord has reinstated the tenancy.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

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

The landlord is not entitled to recovery to the \$50.00 filing fee.

Conclusion

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

The landlord is not entitled to recovery to the \$50.00 filing fee.

The notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

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: January 4, 2011

Dispute Resolution Officer