

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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, to keep all or part of the security deposit 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 documents. 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 tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started November 1, 2010 with rent of \$1850.00, the tenants paid a security deposit of \$925.00. On December 3, 2010 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenants made to payments towards the rent owed on December 17, 2010, one payment was for \$1285.00 and the other for \$400.00. The tenants currently owe a balance of \$485.00 for December 2010 and \$1850.00 for January 2011.

The landlord testified that he did not give the tenants a receipt stating 'for use and occupancy only, does not reinstate tenancy', nor did the landlord clearly tell the tenants that the payments did not cancel the notice or that payment was being accepted for use and occupancy only and the tenancy was not being reinstated.

The landlord stated that he has been trying to contact the tenants but that they are avoiding all contact with the landlord.

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 however when the landlord

accepted rent payments without clearly stating or providing a receipt 'for use and occupancy only, does not reinstate tenancy', the landlord in fact did reinstate the tenancy. Therefore the 10 Day Notice to End Tenancy is hereby set aside with the result that the tenancy continues uninterrupted.

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

As the landlord has not been successful in this application, the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

I therefore set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated December 3, 2010 with the result that the tenancy continues uninterrupted.

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 14, 2011

Residential Tenancy Branch