



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. Despite being personally served with the Landlord's Application for Dispute Resolution and notice of hearing documents on January 21, 2011, the tenant did not attend. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on November 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$725.00 per month is payable in advance on the 1st day of each month, although there is no written tenancy agreement. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$360.00.

The landlord testified that the tenant failed to pay rent when it was due for the month of January, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing.

The landlord further testified that on February 1, 2011, the tenant caught up on the rental arrears and paid February's rent. He stated that the tenant did not want a receipt so he did not issue one "For Use and Occupancy Only."

Analysis

I have examined the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities provided by the landlord and find that the notice was issued on an old version of the form. The *Residential Tenancy Act* states that in order to be effective, a notice to end a tenancy must be in the approved form when given by a landlord.

I also find that the landlord did not issue a receipt that clearly stated "For Use and Occupancy Only," and therefore, the landlord has effectively reinstated the tenancy.

For those reasons, I cannot uphold the notice to end the tenancy issued to the tenant by the landlord. In the event that the tenant does not pay rent when it is due for the month of March, 2011, or any month thereafter, the landlord is at liberty to serve the tenant with the newer, approved version of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the tenant pays the rent within 5 days of receiving the notice, the notice will have no effect and the tenancy continues. If the tenant does not pay the rent in full within 5 days of receiving the notice, the tenant must apply for dispute resolution, or will be conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date. If the landlord collects rent after the expiration of the 5 days, the landlord will likely be found to have reinstated the tenancy unless the landlord issues a receipt that clearly shows that the rent money is being accepted "For Use and Occupancy Only."

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

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: February 03, 2011.

Residential Tenancy Branch