



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated October 5, 2010, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing the landlord advised that the tenant had apparently vacated the rental unit taking most of his possessions and without leaving a forwarding address. Accordingly, I find the portion of the landlord's application requesting an order of possession is now moot.

The landlord appeared but the tenant did not appear despite being served with the Notice of Hearing and application package by registered mail sent to the dispute address on January 11, 2010.

Issue(s) to be Decided

The landlord is also seeking a monetary order claiming unpaid rent of \$1,075.00 and the \$50.00 cost of filing the application.

The remaining issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 5, 2010 with effective date of October 15, 2010, and written testimony. The landlord testified that the tenancy began in 2007 and the rent was set at \$390.00 and a security deposit of \$195.00 was paid.

The landlord testified that the tenant fell into arrears for \$360.00 owed for October 2010, and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant did not leave, but later the landlord received the rent for November 2010 and December 2010. The landlord was seeking a monetary order for the remaining arrears of \$360.00 for October 2010 and additional rent now owed for January and February 2011.

Analysis

Based on the landlord's testimony, after the Ten Day Notice to End Tenancy was issued in October, the landlord accepted payment for rent for subsequent months.

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

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

If rent is accepted after a Notice has been served, it is important that the tenant be made aware that the payment won't reinstate the tenancy between the parties. The landlord must make it clear that the funds are accepted "for use and occupancy only". In this instance I find that, while the landlord may not have intended on reinstating the tenancy, this did occur and it resulted in erasing the October 5, 2010 Notice.

Given the above, I find that the tenancy was reinstated and then was subsequently terminated sometime in November by the tenant's actions in abandoning the rental unit.

Given that the landlord received rent for November and December, I find that the landlord is not entitled to a monetary award for rental arrears owed by the tenant.

Conclusion

I hereby dismiss the landlord's application in its entirety without leave to reapply.

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 04, 2011.

Residential Tenancy Branch