



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on May 1, 2010. The rent is \$900.00 due in advance on the first day of each month. A security deposit of \$450.00 was paid on behalf of the tenant at the start of the tenancy. The tenant has not paid rent for November, December, January or February. On December 5, 2010 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant has not paid the outstanding rent and did not file an application to dispute the Notice. At the hearing the tenant said she withheld rent because of problems with the rental unit. She claimed that the suite was an illegal suite. The tenant did not supply any documents; she has not made any written requests for repairs to the rental unit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant is not entitled to withhold rent without first applying for dispute resolution and obtaining an order authorizing the withholding of rent.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim in the amount of \$2,750.00 being outstanding rent for November, December and January and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: February 02, 2011.
