



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, 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 all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant attended the conference call hearing and the landlord company was represented by an agent. The parties both gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. 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 all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The undisputed evidence of the parties is that this month-to-month tenancy began on December 1, 2010. Rent in the amount of \$1,450.00 per month is payable in advance on the 1st day of each month. On November 1, 2010 the landlord collected a security deposit from the tenant in the amount of \$725.00.

The landlord's agent testified that the tenant failed to pay rent when it was due in February, 2011 and the landlord's agent 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 notice states that the tenant failed to pay \$1,450.00 + \$100.00 that was due on February 1, 2011. She further testified that the \$100.00 is for late fees which

are contained in the tenancy agreement, a copy of which was also provided in advance of the hearing. The notice is dated February 2, 2011, and the landlord's agent testified that the tenant was served with the notice on February 2, 2011 by placing it in the tenant's mail box.

The landlord's agent further testified that on December 25, 2010 the tenant signed an authorization for the landlord to debit the tenant's bank account monthly for rental payments. Further, on March 7, 2011 the tenant paid \$1,500.00 by way of certified cheque which covered the rent for February and the late fees. The landlord's agent prepared a receipt that stated "For Use and Occupancy Only," but did not give the tenant a copy of that receipt and it is still in her receipt book.

The tenant has not paid rent yet for the month of March, 2011 and currently owes \$1,450.00 and \$25.00 for a late fee and \$25.00 for an N.S.F. fee because the rental payment was refused by the tenant's bank for insufficient funds.

The tenant confirmed that he did not receive a receipt for the payment made on March 7, 2011. He stated that he does not want to move, and will be able to make the rent payment shortly and remain current after that.

Analysis

In the circumstances I am satisfied that the tenant failed to pay rent in full within 5 days after the notice to end the tenancy was served. I further find that the landlord reinstated the tenancy by collecting rent after the issuance and effective date of the notice, and therefore the application for an Order of Possession must be dismissed.

I further find that the tenant is currently in arrears of rent the sum of \$1,450.00 plus a late fee of \$25.00 and an N.S.F. fee of \$25.00 for the month of March, 2011. Having found that the tenancy has been reinstated, I find it just in the circumstances to dismiss the landlord's application for a monetary order for unpaid rent and the landlord's application to retain the security deposit in partial satisfaction of the claim. The landlord is at liberty to serve the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the landlord serves the notice on the tenant, the *Act* specifies that the tenant will then have 5 days to pay the rent in full from the date that the tenant is deemed to be served with the notice, or dispute the notice. If the tenant does neither, the tenant will be presumed to have accepted that the tenancy ends 10 days after the notice is deemed served on the tenant. If the tenant pays the rent in full after 5 days from the date of service, the landlord may accept the rent, but must issue a receipt to the tenant that specifies that the money is accepted for use and occupancy only if the landlord wishes to obtain an Order of Possession.

Conclusion

For the reasons set out above, the landlord's application is dismissed.

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: March 17, 2011.

Residential Tenancy Branch