



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and an order of possession for unpaid rent. 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 and notice of hearing by registered mail. 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.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy began November 2008 with monthly rent of \$3000.00, the tenants paid a security deposit of \$2000.00. On February 13, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenants have been repeatedly late paying their rent and that the tenants currently owe the landlord \$2000.00 in unpaid rent for March 2011. The landlord stated that the tenants did make a rent payment to the landlord on March 3, 2011. The landlord testified that they did not provide the tenants with a receipt stating *'for use and occupancy only, does not reinstate tenancy'* when the tenants made the March 3, 2011 rent payment.

As the tenants still occupy the rental unit and have not paid all the rent owed the landlord, the landlord in this application is seeking an order of possession for unpaid rent and monetary order for unpaid rent.

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 and did not pay the outstanding rent within 5 days of receiving the notice or apply for dispute resolution to dispute the notice.

However as the landlord took receipt of rent monies from the tenants after issuance of the notice and did not provide the tenants with a receipt stating '*for use and occupancy only, does not reinstate tenancy*', (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy and must serve the tenants a new notice to end tenancy for non-payment of rent.

Based on the above facts I find that the landlord is not entitled to an order of possession for unpaid rent or a monetary order for unpaid rent.

The landlord's 10 Day Notice to End Tenancy for Unpaid rent dated February 13, 2011 is hereby set aside.

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

Conclusion

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

The landlord's 10 Day Notice to End Tenancy for Unpaid rent dated February 13, 2011 is hereby set aside 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: April 5, 2010

Residential Tenancy Branch