



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 dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The landlord participated in the conference call hearing but the tenant did not. The landlord presented evidence that the tenant was served with the application for dispute resolution and notice of hearing I found that the tenant 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 December, 2010 with monthly rent of \$610.00, the tenants paid a security deposit of \$305.00. On March 2, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant had initially not paid all of the February 2011 rent or the March 2011 rent. The landlord stated that after the tenant was given a notice to end tenancy on February 2, 2011 that the tenant made a rent payment of \$740.00 however that did not pay the balance of rent owed in full.

On March 2, 2011 the landlord served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent. The landlord stated that on March 23, 2011 the tenant paid the landlord \$600.00 towards the rent owed. The landlord stated that the tenant currently owes the landlord \$540.00.00 in unpaid rent for March 2011 and \$610.00 in unpaid rent for April 2011 for a total of \$1150.00 unpaid rent owing the landlord.

The landlord testified that they did not provide the tenant with a receipt stating *'for use and occupancy only, does not reinstate tenancy'* when the tenant made the March 23, 2011 rent payment.

The landlord stated that she spoke to the tenant the day before this hearing to see if the tenant had the rent and wanted to continue her tenancy. The landlord stated that the tenant indicated that she did want to stay in the tenancy and would pay the April rent immediately. The landlord at this time has not received any rent from the tenant.

As the tenant still occupies the rental unit and has 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 tenant after issuance of the notice and did not provide the tenant 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 March 2, 2011 is hereby set aside with the result that the tenancy continues uninterrupted. The landlord's application is dismissed without leave to reapply.

As the landlord has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Conclusion

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

The landlord's 10 Day Notice to End Tenancy for Unpaid rent dated March 2, 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 7, 2010

Residential Tenancy Branch