



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, OPR, 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 March 2, 2011, and a monetary order for rent owed.

Despite being served by registered mail with the hearing package, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an order of possession and monetary order.

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated March 2, 2011 with effective date of March 15, 2011, a copy of the tenancy agreement and a copy of the tenant's ledger.

The rent was \$1,200.00 per month due in advance on the 1st of each month. A security deposit of \$600.00 is being held on behalf of the tenant.

The landlord testified that the tenant had initially only paid \$600.00 of the rent after March 1, 2011, but on March 25 paid the balance of the rental arrears for the month of March 2011. The payment was not received within the 5 days permitted to cancel the Notice.

The landlord testified that the tenants have not yet paid rent owed for April 2011. The landlord was therefore seeking an Order of Possession.

Analysis



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Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door on March 2, 2011. The tenant did not pay the outstanding rent within 5 days to cancel the Notice and the tenant did not make an application to dispute the Notice. It would therefore have been conclusively presumed under section 46(5) of the Act that the tenant accepted that the tenancy ended on the effective date of the Notice and the landlord would be entitled to an Order of Possession ending the tenancy.

However, I find that on March 25 when the landlord accepted payment of the rent, the landlord did not ensure that the tenant was aware that these funds were being accepted for "use and occupancy only" and would not serve to reinstate the tenancy.

Given the above, I find that the tenancy was reinstated by the landlord and I find that an Order of Possession cannot be granted. I dismiss the portion of the application seeking the Order of Possession and the rental arrears for March 2011. However, I find that the landlord is still entitled to receive the \$50.00 fee paid by the landlord for this application despite the reinstatement of the tenancy.

Conclusion

I hereby issue a monetary order for \$50.00 in favour of the landlord . This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 2011

Residential Tenancy Branch