



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MND, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for cleaning expenses, to recover moneys allegedly received from another tenant and to recover the filing fee for this proceeding. The Landlord said he served the Tenant with the Application and Notice of Hearing in person on August 14, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for cleaning expenses and if so, how much?
4. Is the Landlord entitled to recover moneys allegedly paid by another tenant?

Background and Evidence

This month-to-month tenancy started on April 1, 2011. Rent is \$300.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenant had rent arrears of \$200.00 for May and did not pay rent for June or July 2011, and as a result on August 2, 2011 he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2011. The Landlord said the Tenant made a cash payment of \$1,100.00 on August 11, 2011 to an employee at his place of business but he was not issued a receipt for that payment.

Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

However, it is a principle of common law that if a Landlord accepts a payment of rent from a Tenant after the 5 days granted on the 10 Day Notice and does not make it clear to the Tenant that the tenancy will still end, then the Landlord is deemed to have reinstated the tenancy. The Landlord said he made it clear to the Tenant when he served him with the 10 Day Notice that the Tenant would have to move out. The Landlord admitted, however, that when the Tenant made his payment of the outstanding rent, he was not told that his payment would be accepted "for use and occupancy only." The Landlord also admitted that he had not enforced two previous 10 Day Notices (dated May 10 and July 12, 2011) and that the Tenant received the hearing package in this matter *after* the Tenant made his payment. In these circumstances, I find that it would not have been reasonably clear to the Tenant that the tenancy would end despite his payment of the outstanding rent after the 5 days granted on the 10 Day Notice. Consequently, I find that the tenancy was reinstated when the Landlord accepted the Tenant's payment of the outstanding rent on August 11, 2011 and for that reason, the Landlord's application for an Order of Possession is dismissed without leave to reapply.

The Landlord also claimed that a former tenant paid the Tenant her first month's rent and a security deposit of \$300.00 which he was to give to the Landlord. The Landlord said the Tenant gave him the money for this tenant's rent but did not give him the money for the security deposit. I find that this is not a matter for which the Landlord is entitled to make a claim as any claim to a security deposit paid to the Tenant by a former tenant would have to be made by the former tenant. Consequently, this part of the Landlord's claim is also dismissed without leave to reapply.

The Landlord further claimed that the Tenant left his dog unattended on a number of occasions for days at a time and that as a result, the suite would require cleaning to sanitize areas where there had been dog urine and feces. However, the Landlord admitted that he has not yet incurred any cleaning expenses or done any cleaning and in the absence of any other evidence that cleaning is necessary, this part of the Landlord's application is dismissed with leave to reapply.

Conclusion

The Landlord's application(s) for an Order of Possession, to recover a security deposit paid by another tenant and to recover the filing fee for this proceeding are dismissed without leave to reapply. The Landlord's application for cleaning expenses is dismissed with leave to reapply. 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: September 01, 2011.

Residential Tenancy Branch