



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 by the landlord for a monetary order and an order of possession. Although the tenant was not served with the application for dispute resolution and notice of hearing in accordance with section 89 of the Act, he appeared at the hearing and acknowledged that he received the documents from the third party on whom they had been served. I was satisfied that the tenant had notice of the claim made against him and ample opportunity to submit any documents in his defense and the hearing proceeded.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. In June 2011, the parties entered into an agreement whereby the tenancy was to start on July 1, 2011 at a rental rate of \$850.00. The agreement required the tenant to pay \$425.00 for a pet deposit and \$425.00 for a security deposit. The tenant gave the landlord a cheque for \$850.00 for rent for July, a cheque for \$450.00 for part of the deposits and \$400.00 in cash. The cheques were returned to the landlord for insufficient funds. The landlord was charged a \$35.00 fee by the bank for each returned cheque.

On July 25 the tenant was served with a 10 day notice to end tenancy. The tenant did not dispute the notice or vacate the rental unit.

The tenant's cheque for his rent for August was also returned by the bank and another \$35.00 service fee was charged to the landlord. The tenant paid \$380.00 in cash to the landlord. On August 5 the landlord served a second notice to end tenancy on the tenant. Again, the tenant did not dispute the notice or vacate the rental unit.

The tenant testified that the landlord's husband, who assists the landlord in her administrative duties, told him repeatedly that he would be evicted at arbitration.

The tenant's cheque for the month of September cleared the bank.

Analysis

The tenant suggested that because his rent cheque for the month of September had cleared his account, the tenancy had been reinstated. I do not agree. In order for me to find that the tenancy has been reinstated, I must find that the tenant had been given some indication that his tenancy would be secure if any payment were made. This is clearly not the case as the tenant acknowledged that the landlord's husband repeatedly told him that his tenancy would be ending. I find that the tenancy was not reinstated.

I find that the tenant received notices to end tenancy. He did not dispute the notices and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy is over. I therefore grant the landlord an order of possession which may be filed in the Supreme Court and enforced as an order of that Court.

I find that the tenant must be held liable for the rental arrears. As the tenancy is ending, it is not appropriate to order the tenant to pay the \$450.00 still owing towards the security and pet deposits. However, I find that the tenant must pay the \$850.00 in rent which is still owing for July, the \$470.00 in rent which is still owing for August and the \$105.00 in bank service charges which were levied because of the tenant's returned cheques. I find that the landlord is also entitled to recover the \$50.00 filing fee paid to bring this application.

The landlord's total entitlement is \$1,475.00. The landlord has received \$400.00 toward the security deposit and I order to retain this sum in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance of \$1,075.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1,075.00. The landlord may retain the security deposit.

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 19, 2011

Residential Tenancy Branch