



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on September 15, 2008. The rent is \$750.00 due in advance on the first day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy. The tenant did not pay rent for August when it was due. On August 4, the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. On August 9, 2011 the tenant paid \$200.0 to the landlord by direct deposit. She paid a further \$700.00 on September 30, 2011. The landlord issued a receipt for use and occupancy only. The tenant has not paid rent in October and she did not file an application to dispute the Notice to End Tenancy.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective October 31, 2011 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. Provided that the tenant is able to make some payments on account of rental arrears the landlord is encouraged to withhold enforcement of the order for possession for some time in order to give the tenant more time to relocate.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,350.00 for the outstanding rent for August, September and October. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,400.00. I order that the landlord retain the deposit and interest of \$375.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,025.00. This order may be filed in the Small Claims Court 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: October 28, 2011.

Residential Tenancy Branch