



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent for the Landlord testified that the Tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on November 23, 2011. The Agent testified he checked the tracking information for the mail and confirmed it was received by the Tenant on November 24, 2011. Despite this, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Agent, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on November 9, 2011, by personal service. The Notice was for unpaid November rent in the amount of \$375.00.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Agent testified that the Tenant did not pay the November rent until December 1, 2011. The Agent testified that at the same time the Tenant paid the November rent he paid the December rent.

The Agent testified that the Landlord is no longer owed rent, however, the Landlord still wishes to end the tenancy at the end of December 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not pay the November rent on the date it was due and did not pay the rent within five days of receiving the Notice. The Tenant also did not apply to dispute the Notice.

Therefore, the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Based on the consent of the Agent as to the date, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. December 31, 2011**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$50.00 comprised of the fee paid by the Landlord for this application.

I order that the Landlord may retain \$50.00 from the deposit and interest to recover the filing fee for the Application. The Landlord must deal with the balance of the security deposit at the end of the tenancy in accordance with the Act.

Conclusion

The Tenant failed to pay rent when it was due, or within five days of service of the Notice, and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord requested the tenancy end on the last day of December 2011.

The Landlord is granted an Order of Possession for December 31, 2011, and may keep \$50.00 from the security deposit and interest for the filing fee for the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 08, 2011.

Residential Tenancy Branch