



Dispute Resolution Services

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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 November 11, 2011, and a monetary order for rent owed.

Despite being served in person with the hearing package on November 18, 2011, , 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 November 3, 2011 with effective date of November 13, 2011.

The rent is \$750.00 per month due in advance on the 1st of each month. A security deposit of \$375.00 is being held by the landlord on behalf of the tenant.

The landlord testified that the tenant had failed to pay all of the rent owed for November and still owed \$375.00 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the arrears were not paid in the required 5 days, and the tenant did not dispute the Notice.

However, according to the landlord, two associates of the tenant paid all or part of the rent for rent in December 2011, with cheques made out to the landlord from the Ministry. The landlord testified that he accepted and forwarded the cheques to the owner, but is not sure whether the owner has cashed the cheques. The landlord testified that no receipt was issued to the tenant stating that the funds were being accepted "*for use and occupancy only*" and did not function to reinstate this tenancy.

The landlord testified that the tenants are still in arrears and the landlord is seeking an Order of Possession and a Monetary Order based on the Notice.

Analysis

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 November 3, 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. In such a situation, it is 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 in December 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” by giving the tenant a receipt that made this clear. Under the Act, the landlord had an obligation to make the tenant understand that acceptance of the funds would not serve to reinstate the tenancy and that the landlord would still be proceeding with the termination of the tenancy despite the late payment satisfying November arrears, and leaving December rent now in arrears. .

Given the above, I find that the tenancy was inadvertently 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 compensation for outstanding rental arrears applicable to November 2011.

Conclusion

I hereby dismiss the landlord’s application in its entirety without leave.

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: December 06, 2011.

Residential Tenancy Branch