



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that the landlord's agent (the agent) handed her the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 5, 2011. The tenant also confirmed the agent's testimony that a representative of the landlord handed the tenant a copy of the landlord's dispute resolution hearing package on December 24, 2011 at approximately 2:50 p.m. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on October 1, 2011. Monthly rent is set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$200.00 security deposit paid on October 1, 2011.

On the 10 Day Notice, the landlord identified \$1,300.00 as owing at that time. The landlord applied for an Order of Possession for non-payment of the total amount

identified as owing on the 10 Day Notice. She also applied for a monetary award of \$1,150.00, which included unpaid rent and the landlord's filing fee.

In her written evidence submitted on the landlord's behalf, the agent noted that the tenant had paid \$200.00 on December 24, 2011 and \$900.00 by cash on January 17, 2012. At the hearing, she said that no part of the rent identified as owing on the 10 Day Notice remained outstanding as the landlord had accepted rental payments from the tenant for all of this unpaid rent. At the hearing, the agent withdrew the application for a monetary award for unpaid rent from November and December 2011 and testified that the only monetary award that she was seeking on the landlord's behalf was the recovery of the landlord's \$50.00 filing fee. However, the agent also requested an end to this tenancy for the tenant's failure to pay her outstanding rent in accordance with her tenancy agreement and within the five day time frame set out on the 10 Day Notice. The landlord said that there is outstanding rent of \$600.00 owing for January 2012, although she provided no evidence that a new 10 Day Notice has been issued for unpaid rent for that month.

Analysis

I find that the tenant failed to pay the entire rent identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days would have led to the end of her tenancy had the landlord not accepted rental payments from the tenant on two occasions, and in this way, continued this tenancy.

Based on the agent's oral evidence and the written evidence submitted by the agent on the landlord's behalf, I find that the two payments accepted by the landlord on December 24, 2011 and January 17, 2012 were accepted for outstanding rent. The receipt entered into written evidence for the \$900.00 cash payment on January 17, 2012 makes no mention that this payment was received for "use and occupancy only." The late evidence submitted by the agent also referred to \$200.00 of the January 17, 2012 payment as being received by the landlord for "November's Rent" and the remaining \$700.00 for "December's Rent." Based on this consistent oral and written evidence submitted on the landlord's behalf, I find that the payments received by the landlord were received for outstanding rent. By accepting rental payments and not payments for use and occupancy only, I find that the landlord reinstated the tenancy after having served a valid 10 Day Notice to the tenant. By accepting her payments, I find that the tenant had every right to expect that the landlord had reinstated the tenancy agreement

and was no longer proceeding with the application to end this tenancy on the basis of the 10 Day Notice.

For the reasons outlined above, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of December 5, 2011, without leave to reapply on the basis of that 10 Day Notice.

Since at the time the landlord applied for dispute resolution the tenant had not complied with the 10 Day Notice, I find that the landlord is entitled to recover her \$50.00 filing fee for this application from the tenant. To accomplish this, I order that the landlord retain \$50.00 from the tenant's security deposit.

Conclusion

The landlord's application for a monetary award for unpaid rent owing from November 2011 and December 2011 was withdrawn at this hearing.

I dismiss the landlord's application for an end to this tenancy and an Order of Possession based on the 10 Day Notice without leave to reapply.

I find that the landlord is entitled to recover her \$50.00 filing fee from the tenant. I order that the retained value of the tenant's security deposit held by the landlord is now set at \$150.00.

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: January 19, 2012

Residential Tenancy Branch