



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent; loss of rent; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to be heard.

I determined that neither party had provided documentary evidence to the other party in support of their respective positions. The landlord provided copies of rent receipts to the Branch only. Accordingly, this proceeding was based upon verbal testimony only.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced in April 2010 and the tenant paid a \$300.00 security deposit. The rent was set at \$600.00 when the written tenancy agreement was signed and rent is due on the 1st day of every month. The rent was subsequently reduced to reflect that the tenant was required to obtain a hydro account that also services another unit.

The landlord testified the tenant's monthly rent was \$570.00 and the tenant testified that the rent was \$560.00 per month.

The landlord testified that he served the tenant with a Notice to End Tenancy for unpaid rent by posting it on the tenant's door February 5, 2012.

The tenant testified that he left a cheque for the landlord at the end of January 2012 to cover February's rent and then he left town for a couple of weeks. When he returned he found the cheque attached to the Notice to End Tenancy on his door.

The tenant submitted the landlord has refused payment by cheque and will only accept cash. The landlord stated the cheque was not signed but that he would accept certified cheque.

The tenant submitted he tried to pay rent in cash after he returned to town but the landlord would not accept it. I was provided submissions that the tenant frequently pays rent late.

The landlord also submitted the tenant has not paid rent for March 2012. The tenant agreed with this statement.

Analysis

In order to end a tenancy for unpaid rent the landlord is required to serve the tenant with a Notice to End Tenancy in the approved form and serve all pages of the Notice. The purpose of serving a Notice to End Tenancy for Unpaid Rent is to put the tenant on notice that rent has not been received and the actions that will be taken against the tenant if he does not pay within five days.

A party that makes an Application for Dispute Resolution has the burden to show they are entitled to the Orders they are seeking. Where a landlord applies for an Order of Possession based upon a Notice to End Tenancy it is reasonable to expect the landlord would provide a copy of the Notice to End Tenancy to establish his entitlement to end the tenancy and regain possession of the rental unit.

In this case, I am unable to determine whether the landlord served the tenant with a valid Notice to End Tenancy because a copy was not provided to me.

In light of the above, I find the landlord has not established an entitlement to obtain an Order of Possession or Monetary Order for unpaid rent.

As the tenant acknowledged that the landlord has not yet received payment for February and March 2012 rent I find the landlord at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent to require the tenant to pay the outstanding rent for February and March 2012. If the tenant fails to do so within five days of receiving such

a Notice the landlord is at liberty to make another application for an Order of Possession and Monetary Order for unpaid rent.

Having heard the tenant is often late paying rent and did not sign the cheque he left for the landlord at the end of January 2012 I order the tenant pay his rent by one of the following methods: cash, certified cheque, bank draft, or money order.

Conclusion

The landlord's application is dismissed with liberty to reapply. The tenant is ordered to pay rent by one of the following methods: cash, certified cheque, bank draft or money order.

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: March 07, 2012.

Residential Tenancy Branch