



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 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:47 p.m. in order to enable the tenant to connect with this hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord said that he handed the tenant a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 7, 2012. He did not provide a copy of the 10 Day Notice before the hearing. I said that I would consider the 10 Day Notice if he faxed it to the Residential Tenancy Branch (RTB) by 3:45 p.m. on the day of the hearing. The RTB did not receive a fax from the landlord. The landlord's witness testified that he handed the tenant a copy of the landlord's dispute resolution hearing package at 2:00 or 3:00 p.m. on April 21, 2012. The landlord testified that he witnessed the tenant receiving this package. I am satisfied that the dispute resolution hearing package was served to the tenant in accordance with the *Act*.

At the hearing, the landlord testified that the tenant has now paid all outstanding rent. Consequently, the landlord withdrew his application for a monetary award.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on January 15, 2012. Monthly rent is set at \$650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$325.00 security deposit paid on January 15, 2012.

The landlord testified that the tenant paid \$1,090.00, the amount claimed in the landlord's application for a monetary award on May 1, 2012. He testified that he accepted this payment "for rent, subject to the decision of the Rentalsman" (now the RTB). I asked him to clarify his statement and he confirmed that he accepted the May 1, 2012 payment for rent owing from April and for the tenant's May 2012 rent.

Analysis

Based on the landlord's sworn testimony, I find that the landlord continued the tenancy by accepting the tenant's rental payment after issuing the 10 Day Notice, without advising the tenant that he was doing so for "use and occupancy only." Under these circumstances, I cancel the landlord's 10 Day Notice and dismiss the landlord's application for an Order of Possession without leave to reapply as the landlord's actions have continued this tenancy.

The landlord's application for a monetary award is withdrawn.

As the landlord has been unsuccessful in his application, he bears responsibility for his own filing fee.

Conclusion

I cancel the landlord's 10 Day Notice and dismiss the landlord's application for an Order of Possession without leave to reapply. This tenancy continues.

The landlord's application for a monetary award is withdrawn and the landlord's application for recovery of his filing fee is dismissed without leave to reapply.

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: May 10, 2012

Residential Tenancy Branch