



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy began on August 15, 2011. Rent in the amount of \$1,650.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$825.00. The Tenant was in arrears of \$150.00 for May 2012 rent, failed to pay June 2012 rent and on June 12, 2012 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent (the “Notice”) by posting the Notice on the door. The outstanding rental amount is noted as \$2,450. Between June 28 and July 30, 2012, the Tenant paid the arrears including part of August 2012 rent. The Landlord accepted

these amounts without providing a receipt. The rent owing for August is \$1,400.00. The Tenant has not filed an Application for Dispute Resolution and has not moved out of the unit. The Landlord claims \$3,450.00 in rental arrears.

It is noted that the Landlord did not file a copy of the June 2012 Notice.

The Tenant states that by paying the rental amounts she understood that the Landlord would not act on the Notice to end the tenancy and that her tenancy would continue. The Landlord states that the Tenant has a history of paying rent in varying amounts and that the Tenant should have known that the Notice would be acted on by the Landlord as this intention would have been shown by the service of the application on the Tenant on July 26, 2012.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the landlord accepts rent after the effective date of the Notice to End Tenancy, the intent of the parties will determine whether the tenancy has been reinstated. Based on undisputed facts, I find that as the Notice was served on June 12, 2012, the effective date of the Notice would be June 22, 2012. Given the undisputed facts that the Landlord accepted rent on a continuous basis after the effective date of the Notice and provided no receipts indicating that the amounts were accepted as use and occupancy only and noting that the Landlord accepted these monies prior to serving the Tenant with the application, I find on a balance of probabilities that the Landlord effectively reinstated the tenancy and that the Notice is no longer valid. As the Notice is no longer valid, I dismiss the Landlord's application.

Conclusion

The Notice is not valid, the tenancy continues and the Landlord's application is dismissed.

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: August 16, 2012.

Residential Tenancy Branch