



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 dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

The landlord stated that when he filed his application, someone at the Residential Tenancy Branch made copies of all of his evidence, including the notice to end tenancy. However, there was no evidence in the landlord's file before me, aside from the landlord's application. The tenant stated that she received a copy of the landlord's application and a copy of the notice to end tenancy in the same package. I heard testimony from the landlord and the tenant, and based my decision on the testimonial evidence only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on March 1, 2009. Rent in the amount of \$1950 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 \$975.

Landlord's Testimony

The landlord stated that the tenant failed to pay September 2012 rent, and on September 4, 2012 the landlord served the tenant a notice to end tenancy for unpaid rent by registered mail. The tenant did not pay September's rent until September 26, 2012. The landlord told the tenant at that time that he would be enforcing the notice to end tenancy. As of the date of the hearing, October 26, 2012, the tenant had not yet paid October 2012 rent.

Tenant's Testimony

The tenant did not receive the notice to end tenancy until September 27, 2012, when she was served the landlord's application for dispute resolution. The tenant paid September 2012 rent on September 26, 2012. The landlord wanted the tenant to find a roommate to help with the rent. The landlord did not say that he would enforce the notice to end tenancy when the tenant paid the rent. The tenant acknowledged that she still owes the rent for October 2012.

Analysis

I find that the landlord is not entitled to an order of possession. The landlord did not provide sufficient evidence that the tenant was served the notice to end tenancy before she received a copy of the notice with the landlord's application on September 27, 2012. The parties agreed that the tenant paid September's rent on September 26, 2012.

As for the monetary order, I find that the landlord has established a claim for \$1950 in unpaid rent for October 2012.

As the landlord's application was partially successful, I find that the landlord is entitled to recovery of half of the filing fee for the cost of his application, in the amount of \$25.

Conclusion

The portion of the landlord's application regarding an order of possession is dismissed, and the tenancy continues.

The landlord is entitled to a monetary order in the amount of \$1975. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As the tenancy is continuing, I decline to apply the security deposit against the monetary order at this time. The landlord continues to hold the deposit in trust, and it must be dealt with in accordance with the Act.

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: October 29, 2012.

Residential Tenancy Branch