



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 0, 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 recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The tenant still resides in the rental unit.

The landlord was 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 tenancy began on October 01, 2010. Rent in the amount of \$767.25 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of September 2012 and on September 20, 2012 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it on the door – deemed received September 23 and effective October 03, 2012. The tenant failed to pay the outstanding rent by September 28, 2012, and the landlord accepted rent for October 2012 – prior to the effective date of the Notice to End (and subsequently accepted November 2012 rent). The landlord testified that they did not articulate to the tenant, nor did they provide a receipt to the tenant, confirming acceptance of the rent for room and occupancy only.

Analysis

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice – October 03, 2012. However, I find that the landlord accepted rent, within the 10 days prior to the effective date of the Notice to End, but did not accept it *solely for use and occupancy only*. As a result, I find that the landlord re-instated the tenancy. None the less, the landlord is owed unpaid rent in the amount of \$767.25. The landlord further seeks recovery of the administrative fee of \$25.00 for the tenant's NSF cheque, for which the landlord provided evidence.

Based on the above facts I find that the landlord is not entitled to an Order of Possession and this portion of the landlord's claim **is dismissed**, without leave to reapply. .

I find that the landlord has established a monetary claim for \$767.25 in unpaid rent, and \$25.00 for the NSF cheque. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$842.25**.

Conclusion

The landlord's application for an Order of Possession **is dismissed**, and the tenancy continues.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$842.25**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 28, 2012

Residential Tenancy Branch