



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof of service of the hearing documents. The landlord confirmed that the tenant received the hearing documents and continues to reside in the rental unit. I was satisfied the tenant has been sufficiently served with notice of this proceeding and I continued to hear from the landlord in the absence of the tenant.

During the hearing the landlord withdrew his request for to recover unpaid rent or loss of rent from the tenant and authorization to retain the security deposit. The landlord requested an Order of Possession and recovery of the filing fee only. The landlord is granted leave to file a subsequent application with respect to any monetary claims against the tenant and/or to request authorization to retain the security deposit. The landlord was informed that the security deposit shall remain in trust, to be administered in accordance with the Act

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that the tenancy was inherited from the former owner of the property and there is not a written tenancy agreement in place. The landlord submitted that the tenant is required to pay rent of \$1,026.00 on the 1st day of every month under a verbal agreement. The tenant did not pay rent for September 2012 and on September 25, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice indicates the tenant failed to pay rent of \$1,026.00 on September 1, 2012 and has a stated effective date of October 6, 2012.

The landlord testified the tenant received the Notice on September 26, 2012 as the tenant spoke to the landlord about the Notice on September 26, 2012. The tenant did not file to dispute the Notice; however, the tenant paid the landlord \$1,026.00 on October 26, 2012. The tenant made a further payment of more than \$900.00 on November 5, 2012.

The landlord confirmed that he did not communicate or otherwise indicate to the tenant that the landlord would reinstate the tenancy upon payment of the outstanding rent. Rather, he informed the tenant that he was entitled to the monies even if the tenancy ended.

The landlord requested an Order of Possession with an effective date of two weeks after service.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended October 6, 2012. I am satisfied the tenancy was not reinstated. Therefore, I find the landlord is entitled to regain possession of the rental unit and provided with this decision is an Order of Possession effective two (2) weeks after service upon the tenant.

I award the filing fee to the landlord and provide the landlord a Monetary Order in the amount of \$50.00.

Conclusion

The landlord has been provided an Order of Possession effective two weeks after service. The landlord has been provided a Monetary Order in the amount of \$50.00 to recover the filing fee paid for this application.

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 07, 2012.

Residential Tenancy Branch