



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 for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no party raised any issue regarding service of the evidence or application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenant was cautioned multiple times to stop interrupting the proceeding, but she ultimately failed to do so. At the end of the hearing, as I explained the process of issuing a written Decision, the tenant again interrupted and I concluded the telephone conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order and to recover the filing fee?

Background and Evidence

Although no tenancy agreement was entered into evidence, I heard undisputed testimony that this tenancy began on April 1, 2012, monthly rent is \$640.00 and that the tenant paid a security deposit of \$320.00 at the beginning of the tenancy.

The landlord gave evidence that on November 2, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery, listing unpaid rent of \$790.00 as of November 1, 2012. The effective vacancy date listed on the Notice was November 12, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord stated that the tenant made some payments of rent after the Notice was delivered, but was not sure of the amounts and the dates. Additionally the landlord did not know the amount of late fees which had been included with the unpaid rent listed.

The landlord served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent for December, which stated that unpaid rent of \$180.00 was owed as of December 1, 2012.

The landlord's evidence also showed that the balance of the total rent owed was \$180.00 for December 2012.

The tenant acknowledged owing the amount of \$200.00 as of the day of the hearing and that she had the money ready to pay.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on November 2, 2012. Pursuant to section 46 of the Act, the tenant had 5 days after receipt of the Notice to pay the rent in full or to dispute the Notice or she is conclusively presumed to have accepted the tenancy ended.

In the case before me, it is apparent that the tenant made payments of rent in November and even payments toward the December rent, as shown by the landlord's evidence of the written statement and the Notice served in December. As I informed the landlord, however, the subject of this hearing was the November 2, 2012, Notice and not the December 2012 Notice.

I find that the landlord submitted insufficient evidence as to when the payments of rent were made in November and in what amounts. Therefore I am unable to determine if the tenant paid the amount of rent listed on the Notice within 5 days or beyond the 5 days allowed. Without such proof, it is just as likely as not that the tenant paid the full amount of unpaid rent within 5 days.

Based on the aforementioned lack of proof of payments of overdue rent and the dates paid in November 2012, I find the 10 Day Notice to End Tenancy issued on November 2, 2012, should be and I therefore order that it is cancelled.

As I have cancelled the Notice, I hereby dismiss the landlord's application with the effect that the tenancy continues until otherwise ended under the tenancy agreement or Residential Tenancy Act.

The tenant is cautioned that rent is due and payable in full on the 1st day of each month, failing which, the landlord is at liberty to issue another 10 Day Notice for Unpaid Rent seeking to end the tenancy or act upon the Notice issued in December 2012.

Conclusion

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* and is being mailed to both the applicant and the respondent.

Dated: December 19, 2012.

Residential Tenancy Branch