



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This Review 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; and
3. 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 tenancy began on September 1, 2012. Rent in the amount of \$1,050.00 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 \$525.00. The Tenant failed to pay rent for October 2012 and on October 4, 2012 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Tenant submits that the Tenant attempted to pay the rent within the 5 days of receipt of the Notice but was unable to contact the Landlord. The Landlord submits that the Landlord was out of the country following the service of the Notice but left her daughter as Agent

to deal with the tenancy. The Landlord submits that the daughter tried to call the Tenant several times with no answer.

There is no dispute that the Tenant was able to reach the Landlord by October 13, 2012 and on October 15, 2012, the Tenant paid \$550.00 towards the rent. The Tenant states that he was informed that he should not worry about the Notice to End Tenancy any longer. The Landlord denies this and states that nothing was said to the Tenant and that no receipt was provided for this payment. It is noted that the Landlord made an application for dispute resolution on October 15, 2012.

The Tenant states that on October 20, 2012, the remaining rent was provided to the Landlord who again said everything was fine. The Landlord denies this and states that nothing was said and that a receipt for "use of property" was provided to the Tenant for the remainder of the rent. The Tenant states that the Landlord did not say anything about the application and that the Tenant did not know what the "use of property" phrase meant on the receipt.

There is no dispute that the Tenant received the Landlord's application on October 24, 2012. The Parties agree that the Tenant paid November 2012 rent in full on the first of the month and that a receipt for "use of property" was provided to the Tenant. The Tenant states that the Landlord was asked what was going on with the application and that the Tenant was told again not to worry about it. The Tenant states that the rent for December 2012 and January 2013 has not been paid and that the Tenant plans to vacate the unit pursuant to a notice to end tenancy dated January 2, 2013.

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. I find the Tenant's evidence of the attempt to pay the rent within the 5 day period preferred over the Landlord's evidence on this point. I make this finding based on the overall lack of a ring of truth to the

Landlord's evidence. Had the Landlord not acted to frustrate the Tenant's rent payment, I also find that the Tenant would likely have paid the rent within the 5 day period required to cancel the Notice. I further accept the Tenant's evidence that upon payment of the rent on October 15 and October 20, 2012 the Tenant was told not to worry and that the Tenant relied on this information to believe that the tenancy would continue. I find that the Landlord therefore effectively reinstated the tenancy in October 2012. As a result, I find that the Notice is not valid and I dismiss the Landlord's application. The Landlord is at liberty to make an application in relation to any other Notice to End Tenancy that has been served on the Tenant.

Conclusion

The tenancy has been reinstated and the 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 Act.

Dated: January 9, 2013
