



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant filed to cancel a Notice to End Tenancy for unpaid rent. The tenant did not appear at the hearing and the landlord confirmed that she had been served with the tenant's Application. As the landlord appeared at the hearing and was prepared to deal with the tenant's Application I dismissed the tenant's Application without leave in the absence of the tenant.

The landlord had filed for an Order of Possession and Monetary Order for unpaid rent and loss of rent, as well as authorization to retain the security deposit. The landlord testified that she sent her hearing documents to the tenant at the rental unit on December 20, 2012 via registered mail but that the registered mail was recently returned as unclaimed. As section 90 of the Act deems service of a document five days after mailing, even if the recipient does refuses delivery or does not pick up the mail, I was satisfied the tenant was sufficiently served with the landlord's Application and I continued to hear from the landlord without the tenant present.

Shortly after the commencement of the hearing, the landlord stated that the tenant has paid the outstanding rent for December 2012 and January 2013, in three payments made between Christmas and January 9, 2013. Although the landlord issued receipts for "use and occupancy only" the landlord stated that she was prepared to continue or re-instate the tenancy provided the tenant is agreeable to complying with her obligations under the tenancy agreement and the Act. As such, the landlord withdrew her request for an Order of Possession.

As rent has since been paid the only remaining issue is the filing fee paid for the landlord's Application. The landlord requested she be provided an award for recovery of the filing fee by way of a Monetary Order.

Issue(s) to be Decided

Award of the filing fee.

Background and Evidence

The tenant is required to pay rent of \$600.00 on the 1st day of every month. The landlord posted a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on December 2, 2012. The Notice indicated that \$600.00 in rent was outstanding as of December 1, 2012 and had a stated effective date of December 15, 2012. The landlord filed her Application for Dispute Resolution on December 17, 2012. The tenant subsequently made three payments to the landlord for the rental arrears and January 2013 rent: \$250.00; \$600.00 and \$350.00 between Christmas and January 9, 2013. The landlord issued receipts for "use and occupancy only".

I note that the tenant's reason for disputing the 10 Day Notice, as indicated on her Application, was that her rent money was stolen and that she needed more time to pay the rent owed.

Analysis

Based upon the undisputed evidence before me, I am satisfied the landlord is entitled to an Order of Possession under the Act since the tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice and the tenant did not have a legal basis under the Act for not paying rent when due. However, I have not provided an Order of Possession to the landlord with this decision as the landlord withdrew the request for such.

Having found the landlord was in a position to seek an Order of Possession and Monetary Order at the time of filing, I award the landlord the filing fee paid for her Application pursuant to the authority afforded to me under the Act. Provided to the landlord is a Monetary Order in the amount of \$50.00 to serve upon the tenant.

Conclusion

The tenant's application was dismissed without leave to reapply.

The landlord withdrew her request for an Order of Possession and one is not provided with this decision. The landlord has been provided a Monetary Order in the amount of \$50.00 representing recovery of the filing fee.

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: January 17, 2013

Residential Tenancy Branch

