



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that one of her colleagues (DL) handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 2, 2012. She said that this same colleague handed the tenant another 10 Day Notice on January 2, 2012, for rent owing for January 2013. She also said that the 10 Day Notice in January was also sent by registered mail and by email. The landlord testified that one of the landlord's representatives handed the tenant a copy of the landlord's dispute resolution hearing package on December 14, 2012. I am satisfied that the above documents were served to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that the tenant paid all of her December 2012 rent on December 10 or 11, 2012. The tenant's December 2012 rent, the amount identified as owing in the landlord's application, was paid prior to the landlord's application for dispute resolution. For this reason, the landlord withdrew the application for a monetary award for rent owing as of December 12, 2012. The landlord's application for a monetary award for unpaid rent for December 2012 is withdrawn.

Issues(s) to be Decided

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

Background and Evidence

The landlord was uncertain when this tenancy began. She said that the tenant has likely been living in the rental unit for "a few years." She testified that monthly rent is

currently set at \$1,648.00, payable in advance on the first of each month. She said that she was uncertain as to whether or not a security deposit was paid for this tenancy or whether the landlord continues to hold that deposit.

The landlord testified that the landlord accepted the tenant's full rent payment of \$1,648.00 on December 10 or 11, 2012, before the landlord submitted this application for dispute resolution. She testified that no receipt was issued to the tenant for her December 2012 rent payment. The landlord said that the tenant continues to owe rent for January 2013.

Analysis

I find that there is undisputed testimony from the landlord that the landlord accepted the tenant's payment of \$1,648.00 for December 2012 rent after the 10 Day Notice of December 2, 2012 was to take effect. By accepting this payment for rent and not for "use and occupancy only," I find that the landlord continued this tenancy. The landlord also proceeded to apply for an end to this tenancy on the basis of the 10 Day Notice and for a monetary award for unpaid rent for December 2012, even after the landlord had accepted the tenant's full rental payment for that month. Under these circumstances, I dismiss the landlord's application for an end to this tenancy and an Order of Possession based on the 10 Day Notice of December 2, 2012, without leave to reapply.

Conclusion

The landlord's application for a monetary award for unpaid rent owing for December 2012 is withdrawn.

I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice issued in December 2012, without leave to reapply. This tenancy continues.

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

