



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This 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 for the recovery of the filing fee – 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 November 1, 2011. Rent in the amount of \$1,025.00 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 \$512.50. The Tenant failed to pay full rent on January 2, 2013 and on January 7, 2013 Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Notice sets out \$512.00 in arrears and an effective date of January 21, 2013. The Landlord received \$275.00 on January 16 and \$237.00 on January 17, 2013 from the Tenant.

The Landlord states that the Tenant was sent a letter on January 16, 2013 following the receipt of the \$275.00 indicating that the Landlord accepted the payment as “use and occupancy only”. The Landlord states that no similar letter was sent to the Tenant following the receipt of the final payment of the arrears on January 17, 2013.

The Tenant states that no such letter was received from the Landlord and that when the Tenant called the Landlord on January 16, 2013 to inform the Landlord of the date of the second payment, the Tenant was told by the Landlord's reception that this payment would be okay and was transferred to the Landlord's voice mail. The Tenant states that a message was left for the Landlord but no response was received. The Tenant states that he was led to believe that no further action would be taken in relation to the Notice.

The Landlord states that no call or voice mail was received from the Tenant and confirms that no copy of the Landlord's January 16, 2013 letter was provided as evidence.

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. Where a tenant pays the full amount of the outstanding rent before the effective date of the Notice, the intent and actions of the parties will determine whether the tenancy has been reinstated. Given the evidence of the Tenant's payment of all arrears a few days before the effective date of the Notice and considering that the Landlord did not provide as evidence a letter or receipt indicating that the rent payment of January 16, 2013 was accepted for “use and occupancy only” and that the Landlord did not send a letter or provide a receipt with such indication following the final payment on January 17, 2013, I find on a balance of probabilities that the Landlord has failed to establish the intention to end the tenancy.

The Notice is therefore of no effect and the tenancy continues. The Landlord's application is dismissed.

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*.

Dated: February 15, 2013

Residential Tenancy Branch

