



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J.D. Nelson & Assoc. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord provided evidence for the Hearing that was served on the Tenant in advance of the Hearing containing claims for unpaid March 2013 rent and lost rental income for April 2013. These claims were not included in the application and the application was not amended by the Landlord in advance of the Hearing to include those claims. The evidence package also contains a copy of a 10 day Notice to end tenancy for unpaid rent that the Landlord states was served on the Tenant in person on March 5, 2013. The effective date of this Notice is March 15, 2013. At the Hearing the Landlord verbally requested an amendment to the application to include the claim for

March 2013 rent and for lost rental income for April 2013. The Residential Tenancy Branch Rules of Procedure is silent on amendments made at the time of the Hearing but provides that amendments may be made in advance of the Hearing by consent of the other party.

Although the Tenant has not appeared to dispute the application, given that the application was not amended in advance of the Hearing and is based solely on a prior Notice to end Tenancy for unpaid rent, noting that the effective date of the March Notice to end Tenancy has yet to pass and considering the prejudice that may arise to the Tenant from accepting an amendment contained within the body of the evidence package for this Hearing, I find that the Landlord may not amend the application to include the March Notice to end Tenancy.

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 of \$850.00 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 \$425.00. The Tenant failed to pay rent for February 2013 and on February 8, 2013 the Landlord personally served the Tenant with a 10 day notice to end tenancy for unpaid rent. The effective date of the Notice is February 17, 2013. The Tenant paid the outstanding rent on February 15, 2013. The Landlord did not issue a receipt for this rent as being taken for use and occupancy only. The Landlord provided copies of emails between the Parties indicating that on February 17, 2013, after paying the rent for February 2013, the Tenant appears to suggest ending the tenancy on March 31, 2013 which the Landlord takes as an official notice from the Tenant.

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. If the landlord accepts rent after the effective date of the Notice to End Tenancy, the intent of the parties will determine whether the tenancy has been reinstated. Given the Landlord's evidence that the rent has been paid in full prior to the effective date of the Notice, that the Tenant was not given a receipt for the payment of rent indicating that the amount was being accepted for use and occupancy only and considering that the Landlord indicates an acceptance of the Tenant's possible notice to end for March 31, 2012, I find that the Landlord has reinstated the tenancy and that the Notice is no longer valid. The tenancy continues and the Landlord's application is dismissed.

Conclusion

The tenancy has been reinstated, the Notice is no longer valid and the tenancy continues. 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: March 14, 2013

Residential Tenancy Branch

