



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Incorporated
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

This matter was originally dealt with as a Direct Request proceeding conducted on February 1, 2013 to address the landlord's application for an Order of Possession and a Monetary Order for unpaid rent for January 2013 based on a 10-day Notice to End Tenancy served on January 2, 2013..

Based on the landlord's written submissions, the Arbitrator found that the tenant had a rent shortfall of \$425 on the January 2013 rent, not paid within five days, and issued a Monetary Order in that amount and an Order of Possession to take effect two days from service.

The tenant applied for Review Consideration on February 18, 2013 and was granted the present Review Hearing on the grounds that a broken mail box had prevented service of the Notice of Direct Request Proceeding.

The tenant further submitted that the proceeding did not take into account that he had paid the \$425 rent shortfall and \$300 of the February 2013 rent on January 18, 2013. I would note, however, that the landlord's application was made on January 16, 2013, two days before the payments were made.

Issue(s) to be Decided

Should the decision and orders of February 1, 2013 be upheld, varied or set aside?

Background and Evidence

This tenancy began on September 1, 2012. Rent is \$1,150 per month and the landlord holds a security deposit of \$575 paid at or shortly after the tenancy began.

During the hearing, the parties concurred that the tenant was served with a 10-day Notice to End Tenancy in person on January 2, 2013 due to the rent shortfall of \$425. The parties further agree that the tenant paid the \$425 plus an additional \$300 toward the February 2013 rent on January 18, 2013. The tenant submitted receipts for those payments into evidence.

The tenant stated that, on January 14, 2013, the landlord had agreed to the late payment made January 18, 2013, but the landlord stated she had simply acknowledged his intention to pay the overdue rent, but she did not indicate in any way that the payment would nullify the 10-day Notice to End Tenancy.

Analysis

While I find the landlord's position on whether she approved the late payment to be the more logical, given the opposing verbal evidence of the parties, I must rely on the written record.

Specifically, neither the receipt for the late January 2013 payment, nor that for the early partial payment for February 13, 2013 contain the caveat, "for use and occupancy only," which would have given the tenant clear and unambiguous warning that payment did not constitute reinstatement of the tenancy.

Therefore, I must find that the payments did reinstate the tenancy. Accordingly, the Notice to End Tenancy of January 2, 2013 and the Decision and Orders of February 1, 2013 are set aside and the tenancy continues.

Conclusion

By accepting payment of the January 2013 rent shortfall and an advance on the rent for February 2013 without noting “for use and occupancy only” on the receipts, the landlord reinstated the tenancy. The Notice to End Tenancy of January 2, 2013 is set aside and the Decision and Orders of February 1, 2013 are of no force or effect.

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 25, 2013

Residential Tenancy Branch

