



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

There is no written tenancy agreement. The tenancy began in October, 2012. Monthly rent of \$1,000.00 is payable on the first of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy. The Landlord testified that the tenant owed \$50.00 rent for December, 2012 and has not paid rent since then. The landlord served a Notice to End Tenancy for unpaid rent on March 7, 2013 by posting it to the door of the rental unit. The Notice said that there was \$3,050.00 of rent outstanding as of March 1, 2013. The Notice to End Tenancy was on an outdated form. When the landlord's agent learned that she had served an old form of Notice she served a second Notice to End Tenancy in the proper form by posting it to the door of the rental unit on March 12, 2013. The tenant acknowledged receiving the first notice, but she said that she did not receive the second Notice dated March 12th. The tenant acknowledged that she has not paid the rent for March or for April, but she said that she paid all the rent for December, January and February, although she paid late each time. The tenant said she made all the rent payments in cash, but the landlord refused to give her receipts for the payments. The landlord's agent said that the tenant has paid rent in cash after her first rent cheque was returned due to insufficient funds. She said that she has provided receipts for the tenant's rent payments. The landlord's agent said that payments in

December were not made by the tenant, but were made by a man who said he was either the tenant's brother or husband. The landlord's agent said that he paid the rent for the tenant in several installments, the first of \$500.00, a second of \$350.00 then \$100.00 and finally \$50.00. The landlord's agent acknowledged that she erroneously included a \$50.00 charge for December and that her records showed that December's rent was paid in full. The landlord's agent said that no further payments have been made by the tenant or on her behalf. The tenant acknowledged at the hearing that she did not dispute the Notice to End Tenancy that she received and that she will need to move out of the rental unit..

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. I find that the tenant was served with a Notice to End Tenancy for unpaid rent on March 7th. The landlord served a second Notice on March 12th. The tenant denied receiving the second Notice, but she acknowledge receiving the first Notice and understood that if she did not dispute it she would be conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. She said that she did not dispute it because she understood that the rent had not been paid and she would have to move.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – The tenant did not submit any documents or provide any supporting evidence to support her testimony that she made rent payments in January and February. The landlord's agent kept an account of rent payments received and she referred to it during the hearing and corrected her claim with respect to payment of December rent. I find the landlord's evidence concerning rent payments to be more convincing than the tenant's testimony I find that the landlord has established a total monetary claim of \$4,000.00 for the outstanding rent for January, February, March and April. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$4,050.00. I order that the landlord retain the

security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 23, 2013

Residential Tenancy Branch

