



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 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

This tenancy began on September 1, 2012. The rent is \$1,550.00 due in advance on the first day of each month. The tenant paid a security deposit of \$775.00 at the start of the tenancy. The tenant has been late paying rent throughout the tenancy and the landlord has given several Notices to End Tenancy for unpaid rent. The tenant owed arrears of rent for March and did not pay rent for April when it was due. On April 7, 2013 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. The Notice said that the tenant failed to pay rent in the amount of \$2,350.00 that was due on April 1, 2013. The amount included some arrears from March. Since receiving the Notice the tenant paid all but \$50.00 of the outstanding rental amount, but she has not paid the rent for May. The tenant has not filed an application to dispute the Notice to End Tenancy.

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. The tenant did not pay the outstanding rent within five days and she did not apply to dispute the Notice to End Tenancy; the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

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. During the hearing the tenant said that she wished to pay the rent for May and June so that the landlord would allow her to stay in the rental unit until the end of June to give her time to find other accommodation for herself and her children. I explained to the parties that the landlord has the discretion to accept payment of June rent and to withhold enforcement of the order for possession until the end of June if he chooses to do so.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,600.00 for the outstanding rent for April and May. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,650.00 and I grant the landlord an order under section 67 in the said amount. 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: May 30, 2013

Residential Tenancy Branch

