



Dispute Resolution Services

Page: 1

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 named 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 March, 2012. The initial rent was \$850.00 and the tenant paid a \$425.00 security deposit at the start of the tenancy. In September, 2012 the landlord reduced the rent to \$750.00 per month because the tenant could not afford to pay the higher rent. The landlord testified that there are arrears of rent in the amount of \$1,250.00 as of November, 2012. The tenant did not pay December rent and paid only \$550.00 in January. The tenant paid \$695.00 on account of February rent. The tenant paid \$85.00 in March and has made no payments since then. On April 21, 2013 the landlord personally served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The Notice declared that the amount of rent due as of April 1, 2013 was \$3,670.00 and required the tenants to move out of the rental unit by May 1, 2013. The tenants have not made any rent payments since the Notice was given and they did not file an application to dispute the Notice to End Tenancy. At the hearing the tenant said that he did not apply to dispute the Notice because when the landlord served the Notice the police were present and the landlord then took away the Notice to End Tenancy after he gave it to the tenant. The tenant also said that the landlord personally served him with the application for dispute resolution, but did not separately serve his wife, the co-tenant. I find both respondents have been sufficiently served with the application and Notice of Hearing.

Analysis

The tenant signed an acknowledgement that he received the 10 day Notice to End Tenancy on April 21, 2013. In the face of his written acknowledgement, I do not accept his oral testimony at the hearing, which appeared to be given for the purpose of delaying his eviction to a more convenient time.

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, as in the present case, the tenants do neither of these two things, the tenants are 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.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$3,670.00 for the outstanding rental arrears, including rent for April. The tenant did not dispute that he owed this amount to the landlord. I award the landlord a further \$375.00 as loss of revenue up to May 15, 2013 because if the tenant vacates immediately, it is unlikely that the landlord will be able to re-rent the unit before that date. The landlord has leave to apply for a further monetary order if there is damage to the rental unit or an additional loss of revenue for May. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$4,095. I order that the landlord retain the deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,670.00. 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: May 03, 2013

Residential Tenancy Branch

