



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

I was not provided with a copy of a tenancy agreement. The landlord advised that the tenancy began in August, 2011. The current monthly rent is \$1,245.60 due in advance on the first day of each month. The landlord did not have the particulars of the security and pets deposits with him at the time of the hearing. The landlord testified that the tenant has been repeatedly late paying rent throughout the tenancy. He said that on March 31, 2013 the tenant paid \$625.00 towards the rent due for April. On April 6, 2013 he served personally served the tenant with a 10 day Notice to End Tenancy. The landlord said that the tenant paid the balance of April rent on April 15, 2013 and he gave her a receipt for the payment that provided that the payment was accepted for use and occupancy only and that the tenant must vacate the rental unit at the end of April.

The tenant testified that the landlord signed a receipt when he received the March 31st payment whereby he agreed to wait until April 12, 2013 to receive the second installment of rent for April. She said the landlord was not available to accept the rent on April 12th. She said that she was served with the 10 day Notice to End Tenancy for unpaid rent and did not dispute it because she was told by someone at the Residential

Tenancy Office that all she needed to do was call into the hearing and tell her side of the story.

At the hearing the landlord said that he was prepared to let the tenant stay in the rental unit until May 31, 2013, provided she paid the rent for May. The tenant acknowledged at the hearing that she did not want to continue the tenancy and wished to move as soon as she secured other accommodation, but she said it was difficult finding a landlord who was prepared to accept her large dog. The tenant took the position that the landlord cannot complain about her late rent payment because he agreed to accept two installments of rent for April. The landlord said that he had no control over the matter. The tenant gave him a partial rent payment for April. He was obliged to give her a receipt for the payment and the tenant wrote the statement about a second installment on the receipt that he gave her.

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 dispute the Notice to End Tenancy although it was open to her to do so, based on her assertion that the landlord agreed to accept a late payment. The tenant did not inquire about the procedure to follow until after she was served with the landlord's application for dispute resolution and after the time to dispute the Notice to End Tenancy had expired. I find that the tenant is 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. It is open to the landlord to permit the tenant to remain in the rental unit until May 31, 2013, provided she pays the rent for May.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,240.60 for the outstanding rent for May. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,290.60 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 13, 2013

Residential Tenancy Branch

