



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR FF

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession and a Monetary Order for unpaid rent. Both parties attended the hearing.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant?

Background and Evidence

This tenancy began on or about January 7, 2013. Rent is due on the 1st day of each month in the amount of \$600.00. No security deposit was paid. The landlord served the tenant with a 10-Day Notice to End Tenancy on June 2, 2013, after not receiving the rent for the month of June. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. The tenant has paid no rent since, and remains in possession.

The tenant does not deny that the rent for June and July is unpaid, but contends the landlord is holding furniture that belongs to him, and refuses to give it to him. He only gave this furniture to the landlord to use, because the landlord needed furniture. The tenant also testified that a verbal agreement was made that the landlord would buy the furniture from him, but the landlord refuses to buy it, or return it.

The landlord contends that the furniture in question was never received from the tenant, but in fact was received from a business associate. No agreement has ever made to buy the furniture from the tenant. The furniture in fact belongs to the landlord, not the tenant.

Analysis

Section 26(1) of the Residential Tenancy Act requires a tenant to pay rent, whether or not the landlord complies with the Act, regulations, or the tenancy agreement. The issue before me is whether rent has been paid. The issue of the furniture is therefore relevant only if it was established that the furniture in fact had formerly belonged to the tenant,

but an agreement had been made that it was now given to the landlord in lieu of rent for June.

In fact there is no such agreement. Rather, the tenant and landlord each claim the furniture belongs to them. I therefore need not make a ruling about the furniture, as it has no relevance to the present case, which at its' core is whether rent is owed or not, and whether the landlord is entitled to an Order of Possession. Regarding the rent, I accept the landlord's testimony that no rent has been paid for June or July.

In the absence of the required rental payment for June or a dispute of the Notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. As the effective date of the Notice has passed, the landlord has established a right to possession.

The landlord is entitled to recover the \$600.00 rental arrears for June, and the further \$600.00 loss of rent for July, and the \$50.00 filing fee, from the tenant.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to a monetary order of \$1,250.00, the total found owing by the tenant to the landlord.

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: July 25, 2013

Residential Tenancy Branch