



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with applications by the landlord and by the tenants. The landlord applied for an order of possession and a monetary order. The tenants applied for an order for possession and a rent reduction. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenants did not appear although they were served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 29, 2013. Canada Post records established that the tenants received the registered mail on August 7, 2013. The landlord was unaware that the tenants had filed an application for dispute resolution. She testified that she was not served with the application although it was set for hearing at the same time as her application. In the absence of an appearance by the tenants and in the absence of proof that the landlord was served with the tenants' application, the tenants' application is dismissed without leave to reapply.

Issues

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

This tenancy began on October 1, 2012, although the tenants were given possession of the rental property in September. The rent is \$550.00 due in advance on the first day of each month. The tenants did not pay a security deposit. The landlord testified that the tenants have made sporadic rent payments during the tenancy. According to the landlord's records the tenants have made the following payments:

- November 6, 2012 \$1,650 (payment for Oct, Nov and Dec)
- February 28, 2013 \$500.00

- Credit of \$100.00 granted for cleaning workshop
- April 10, 2013 \$390.00 paid to landlord's account
- May 13, 2013 \$275.00 paid by Social Services
- May 13, 2013 \$190.00 paid to landlord's account
- July 27, 2013 \$550.00 paid to landlord's account.

The landlord testified that in May the tenants offered her a boat in lieu of rental payments. She said that she accepted the boat, but intended that it serve as security for rent payments and not as a substitute for rent. The value of the boat was never established. She later returned the boat to the tenants at the rental property on July 27, 2013.

The landlord personally served the tenants with a 10 day Notice to End Tenancy for unpaid rent on July 8, 2013. The Notice stated that the tenants failed to pay rent in the total amount of \$2,285.00 that was due on July 1, 2013 and it required the tenants to move out by July 18, 2013. The tenants did not pay the rent within five days and they did not apply to dispute the Notice to End Tenancy within five days. After the landlord received a \$550.00 payment on July 27th she advised the tenants that she would not permit the tenancy to continue and the payment was accepted for occupancy only and not to reinstate the 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. If, as in the present case, the tenant does neither of these two things, 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.

Monetary Order and Security Deposit – The tenants' boat was returned to them and I find that it may not be considered as constituting a rent payment. Taking into account the payment received by the landlord and the rent discounts she extended to the tenant as set out in her evidence find that the landlord has established a total monetary claim of \$2,245.00 for the outstanding rent up to the end of August, 2013. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$2,295.00 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: August 30, 2013

Residential Tenancy Branch

