



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 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 named 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 on January 15, 2013. The rent is \$450.00 due in advance on the first day of each month. The tenant paid a security deposit of \$220.00 at the start of the tenancy. The landlord testified that the tenant did not pay rent for May when it was due. The tenant gave the landlord a cheque for May rent, but the cheque was dishonoured and returned to the landlord marked "NSF". In June the tenant paid \$900.00 in payment of May and June rent. The landlord testified that the tenant did pay rent for July and on July 20th the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the tenant's door. The landlord testified that the tenant has not paid rent for July or for August and he did not file an application to dispute the Notice to End Tenancy.

The tenant said that the landlords told him they intended to sell the unit. He said that he paid rent for July but withheld rent for August because the landlord wanted him to move out and they had to give him two months' notice and one month free rent if he wanted him to move. The tenant complained that the landlord disturbed him and his co-tenant and tried to enter the rental unit without permission. He called the police when this happened. The landlord testified that the tenant has refused to answer telephone calls

or to answer the door. The tenant called the police when the landlord was knocking on the door, trying to get the tenant to respond. The landlord denied receiving any rent for July and denied that the tenant was told he had to move because the landlords were going to sell the house. The tenant also complained that there was a mould problem in the rental unit and the fridge did not work properly. He did make any written request to the landlord for repairs.

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 acknowledged receiving the Notice to End Tenancy although he said that he paid rent for July, he did not supply proof of payment and he did not apply to dispute the Notice to End Tenancy. The tenant did not speak to the landlord about the Notice after he received it; this does not lend credence to his testimony that he paid July rent. I accept the landlord's testimony that July rent was not paid. Had the tenant paid rent for July and then received a Notice for unpaid rent I find that he would in all probability applied to dispute the Notice and, at the very least, immediately spoken to the landlord about the Notice to End Tenancy. I find that the tenant has not paid rent for July and August. He did not dispute the Notice and 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.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$900.00 for the outstanding rent for February and March. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$950.00. I order that the landlord retain the deposit and interest of \$220.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the

balance due of \$730.00. 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: August 13, 2013

Residential Tenancy Branch

