



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnr, mnsd, 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, a Monetary Order; and an order to retain the security deposit.

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 rental money payable to the landlord?
- Has the tenancy been reinstated?
- Is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on April 1, 1996. Rent is due on the 1st day of each month in the amount of \$1,025.00. A security deposit of \$375.00 was paid on February 29, 1996. On July 3, 2013 the landlord served the tenant with a 10-Day Notice to End Tenancy, after not receiving rent for the month of July. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. Subsequent payments were made, and as of the date of this hearing, the tenant has paid all arrears. However, on August 15, 2013, one day after receiving the rent for July and August, the landlord advised the tenant in writing to the effect that the tenancy would not be reinstated unless certain clean up had occurred in advance of this hearing, and unless rent was always paid on time in the future. Despite this letter, September's rent was not paid until September 9, 2013.

Analysis

Section 26(1) of the Residential Tenancy Act requires a tenant to pay rent when it is due under the tenancy agreement, and permits a landlord serve a 10 day notice to end the tenancy, if rent is not paid on the due date. Rent must be paid within 5 days of receipt of that notice, if the tenant wishes to cancel the notice and have the tenancy continue.

Although rental payments have been subsequently paid and accepted, and while the tenant is anxious to remain in possession and have the tenancy continue, it is apparent that the subject rental payments have been accepted by the landlord on a use and

occupation basis, and not as a reinstatement of the tenancy. In the absence of the required payment or a dispute of the notice, within the mandatory 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 extended by virtue of the use and possession agreement. The landlord has therefore established a right to possession, effective 1:00 pm on September 30, 2013, the end of the use and occupancy period.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 1:00 pm, on the 30th day of September, 2013. Should the tenant be served with, but fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is awarded recovery of his \$50.00 filing fee from the tenant. Should the tenant not pay this sum by September 30, 2013, the landlord may retain this sum from the tenant's security deposit. The balance of the landlord's monetary claims are dismissed, as the claimed rent has been paid.

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: September 12, 2013

Residential Tenancy Branch

