



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A suppress

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 full or partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced November 1, 2011 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent, which is currently \$808.00, is due on the first day of the month. The tenant paid a security deposit of \$387.50.

On September 7, 2013, the landlord issued and personally served a 10 Day Notice to End Tenancy for Non-Payment of Rent on the tenant for arrears of \$19.50. The effective date of the notice was September 17, 2013.

The tenant never disputed the notice. On September 23 the landlord filed and subsequently served this application for dispute resolution on the tenant.

On October 2 the tenant paid the resident manager the sum of \$19.50 and received a receipt that stated the payment was accepted for "use and occupancy only does not reinstate tenancy."

The tenant's rent is paid directly to the landlord's head office. The October rent was paid in the usual manner. Because the resident manager does not have any involvement in the collection of the tenant's rent she did not provide any receipt to the

tenant. The tenant testified that he had not received anything in writing from the landlord about the October rent payment.

Analysis

The applicable law is explained in *Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices* and *Landlord and Tenant Fact Sheet 124: Reinstatement of Tenancies*.

They explain that a Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

They also explain that the question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only;
- whether the landlord specifically informed the tenant that the money would be for use and occupation only; and,
- the conduct of the parties.

In this case the landlord accepted two payments for rent after the effective date of the Notice. The first payment of \$19.50 was for the September arrears. The landlord gave the tenant a receipt for this payment that clearly stated it was being accepted for use and occupation only.

The second payment was for the October rent. Nothing was given to the tenant that stated the October rent was also being accepted for use and occupation only and that acceptance of the rent did not reinstate the tenancy. I find that by accepting the October rent in this manner the landlord reinstated the tenancy. Accordingly, the landlord's application for an order of possession is dismissed.

The evidence established that as of the date of the hearing there was no rent owed to the landlord.

As the landlord was unsuccessful on its' application it is not entitled to an order for reimbursement from the tenant of the fee it paid to file its' application.

Conclusion

The landlord's application is dismissed.

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: November 12, 2013

Residential Tenancy Branch

