



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a Monetary Order for unpaid rent?

Are the landlords entitled to keep the security deposit?

Background and Evidence

The landlords have provided a copy of the tenancy agreement in documentary evidence. This agreement details that the tenancy started on February 21, 2013; rent for

this unit is \$850.00 per month and is due on the 1st day of each month; and the tenant paid a security deposit of \$425.00 on January 21, 2013.

The landlords' testify that the tenant has been late with rent nearly every month of the tenancy. A 10 Day Notice to End Tenancy was issued to the tenant on September 17, 2013 by posting it to the tenant's door. A copy of the Notice has not been provided in evidence. The landlord agrees that the tenant paid the outstanding rent for September on September 21, 2013.

The tenant testifies that there is no rent outstanding at this time as it was paid on September 21, 2013. Another rent payment had been made on September 05, 2013 for August's rent. The tenant testifies that he did not get the second page of the 10 Day Notice when it was posted to his door.

Analysis

Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The parties agree that a 10 Day Notice was served upon the tenant on September 17, 2013 by posting it to the tenant's door. I have no evidence before me that a complete Notice was served upon the tenant as the landlords have failed to provide a copy of that Notice in evidence. However, even if a complete Notice was served the tenant would have been deemed to have received it three days after it was posted pursuant to section 90(C) of the *Residential Tenancy Act (Act)* therefore being deemed served on September 20, 2013.

Section 46 (1) and 46 (4)(a) of the *Act* states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect,

Consequently I find as the tenant did pay the outstanding rent on September 21, 2013; the tenant did in fact pay the rent within the five allowable days and the 10 Day Notice if in fact a complete Notice had been served has no effect and is hereby cancelled.

As there is no rent outstanding and the tenancy will continue at this time; the landlords' application for an Order of Possession, a Monetary Order and an Order to keep the security deposit are all denied.

Conclusion

The landlord application is dismissed without leave to reapply.

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 07, 2013

Residential Tenancy Branch

