



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 landlord called in and participated in the hearing. The tenant called in after the hearing commenced.

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 April 15, 2013. The rent is \$850.00 due in advance on the first day of each month. The tenants paid a security deposit of \$425.00 after the start of the tenancy. The landlord testified that the tenants have been late in paying rent and in arrears since the tenancy started. The landlord submitted a ledger showing the rental payments that have been made by the tenants since the start of the tenancy. The tenants did not pay rent for October when it was due. On October 7, 2013 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by giving a copy to the tenant. The Notice to End Tenancy stated that the tenants failed to pay rent in the amount of \$950.00 that was due on October 1st. The amount included arrears of \$100.00 and \$850.00 rent that was due on October 1st. The Notice required the tenants to move out of the rental property by October 18, 2013. The tenants paid \$425.00 on October 26, 2013. There is \$1,375.00 in rent that is due as of November 1, 2013. The tenants have not paid rent in full for October or for November and they did not file an application to dispute the Notice to End Tenancy.

At the hearing the tenant said that he had funds to pay the rent, but he claimed that the landlord owed him an unspecified amount of money for cleaning up the property and performing some painting. The landlord submitted letters from the City requiring the landlord to clean up the rental property. According to an August letter from the City an unlicensed scrap metal business was being operated from the property. Another letter dated October 1st stated that the rental property needed to be cleaned up and was in contravention of the *Unsanitary Premises Bylaw*. The landlord claimed that the tenants have damaged the rental property. He claimed an estimated amount for repairs and lost revenue for time to perform the repairs

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants 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 tenants do neither of these two things, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

The tenant claimed that the landlord owes him compensation for work done to the rental property. The *Residential Tenancy Act* provides by section 26 (1) that 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 *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not paid for or performed any emergency repairs and there has been no rent increase since commencement of the tenancy. The tenant has not established that he has any basis for withholding rent payments and I find that he has not provided evidence of any ground that would excuse him from his obligation to pay rent.

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 \$1,375.00 for the outstanding rent for October and November. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,425.00. I order that the landlord retain the deposit and interest of \$425.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord may make a further claim for repairs, cleaning or lost revenue if warranted after the tenants have vacated.

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 21, 2013

Residential Tenancy Branch

