Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Commercial Real Estate
and [tenant name suppressed to protect privacy]

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 permitting retention of the security deposit in partial satisfaction of the claim. Although served with the application for dispute resolution and notice of hearing by registered mail actually received on December 11, 2013, the tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- What order should be made with respect to the security deposit?

Background and Evidence

This one year fixed term tenancy commenced June 1, 2013. The monthly rent of $1100.00 is due on the first day of the month. The tenant paid a security deposit of $550.00.

The tenant's November rent cheque was returned by her financial institution marked "NSF". On November 7 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent. On November 19 the landlord filed this application for dispute resolution. On November 27 the tenant paid the arrears in full together with the late payment fee of $25.00 and the NSF fee of $25.00.

The tenant's December rent cheque was returned by her financial institution marked "NSF". On December 16 the tenant made two separate payments; one for $999.99 and the other for $125.01; which paid the December rent, the late fee and the NSF fee in full.

The tenant's January rent cheque was returned by her financial institution marked "NSF". As of the date of the hearing the January rent had not been paid.

The landlord's witness was not very familiar with this file. She had difficulty providing an account of the payments made by the tenant. She did not know whether any receipts had been issued for the payments made by the tenant and she did not know whether the landlord had indicated to the tenant that the payments were only being accepted for use and occupancy.

Analysis

The landlord accepted several payments of rent after the effective date of the notice to end tenancy. As explained in Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices, when this occurs, the intention of the parties and in particular, the question as to whether the parties understood that the payment did or did not reinstate the tenancy, will be an issue. When determining intent arbitrators can look at the following evidence:

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

On the evidence before me I am not satisfied that the landlord did make it clear to the tenant that the continued acceptance of rent after the effective date of the notice to end tenancy and after the landlord had filed for dispute resolution was not intended to be a reinstatement of the tenancy. Accordingly, the landlord's application based upon the 10 Day Notice to End Tenancy for Non-Payment of Rent dated November 7, 2013, is dismissed.

Conclusion

The landlord's application based upon the 10 Day Notice to End Tenancy for Non-Payment of Rent dated November 7, 2013, is dismissed.

If the tenant is late with any rent payment the landlord may issue and serve a new 10 Day Notice to End Tenancy for Non-Payment of Rent or, given the payment history of this tenant, the landlord may consider issuing and serving a 1 Month Notice to End Tenancy for Cause.

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: January 24, 2014

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Residential Tenancy Branch