



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 and his wife called in and participated in the hearing. The named tenant also called in and took part in the hearing.

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 in September, 2013. The rent is \$1,800.00 due in advance on the first day of each month. The tenants paid a security deposit of \$900.00 at the start of the tenancy. The tenants' cheque in payment of December rent was returned due to insufficient funds. On December 11, 2013 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenants have not paid rent for December or for January and they did not file an application to dispute the Notice to End Tenancy. The tenant testified that her husband lost his employment and she is without funds to pay the rent. She did not dispute the landlord's claim, but she wants the landlord to give her some time to move out of the rental unit.

Analysis

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

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. It will be up to the landlord to determine whether to allow the tenant additional time to move.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$3,600.00 for the outstanding rent for December and January. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$3,650.00.. I order that the landlord retain the deposit and interest of \$900.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,750.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 15, 2014

Residential Tenancy Branch

