



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 and a monetary order. The hearing was conducted by conference call. The landlord and her husband called in and participated in the hearing. The tenant did not appear although she was personally served with the Application for Dispute Resolution and Notice of Hearing on January 16, 2014.

Issues

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The landlord did not provide a copy of the tenancy agreement, although she stated that there is a written agreement. The rent is \$1,800.00 due in advance on the first day of each month. The tenant is responsible for 50% of the Hydro utilities. The tenant did not pay rent for January when it was due. The landlord received a \$400.00 payment from the tenant in January and applied it to a Hydro bill. The sum of \$59.65 from the \$400.00 payment was applied towards January rent leaving the sum of \$1,740.35 unpaid for January. On January 6, 2014 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. On January 16, 2014 the tenant paid the landlord the sum of \$1,130.00. The landlord accepted the payment, but gave the tenant a receipt "for use and occupancy only". The tenant gave the landlord another payment on February 2, 2014 in the amount of \$1,800.00. The landlord again gave the tenant a receipt "for use and occupancy only". The landlord stated at the hearing that the tenant owes an amount for Hydro, but she did not provide any documentary evidence to support her statement and she did not include a claim for unpaid Hydro in her application.

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. In this case the landlord has accepted payments of rent after the effective date of the tenancy. The payments do not reinstate the tenancy because they were accepted: "for use and occupancy only", but the tenant paid \$1,800.00 on February 2, 2014 and I find that she has therefore paid for the occupancy of the rental unit for the month of February.

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 February 28, 2014, 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 – taking into account the payment of \$1,130.00 made on January 16, 2014 and the payment of \$1,800.00 made on February 2, 2014, I find that the landlord has established a total monetary claim of \$610.35 for the outstanding rent for January. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$660.35 and I grant the landlord an order under section 67 in the said amount. 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: February 06, 2014

Residential Tenancy Branch

