



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, MNDC, 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 landlords called in and participated in the hearing. The tenant did not appear although she was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 4, 2014. The tenant's father was named as a tenant in the application for dispute resolution. He was named as a tenant in the original tenancy agreement. The landlord sent a copy of the application and Notice of hearing to him by registered mail sent to the address of the rental unit, but when the application was mailed on January 4, 2014 he did not live at the rental unit. The respondent Mr. K.R. has not been validly served with the application for dispute resolution and Notice of Hearing and the claim against him for a monetary award is dismissed with leave to reapply.

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

A tenancy commenced on August 15, 2012 for a fixed term with monthly rent of \$900.00. The original tenants were husband and wife. They paid a security deposit of \$450.00 at the start of the tenancy. The original tenants moved out and the landlords allowed their adult daughter to occupy the rental unit at a reduced rent of \$810.00 per

month. The daughter signed the original tenancy agreement on Jun 26, 2013. The landlords retained the original security deposit.

The landlords testified that the tenant and her guests damaged the rental unit when a fight occurred inside the unit. The tenant signed a mutual agreement to end the tenancy and agreed to move out on December 31, 2013, but she did not move. The tenant also failed to pay all the rent for November and December; she owes \$200.00 for November and \$160.00 for December. The tenant paid no rent in January. On January 10, 2014 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant has not paid rent for January or for February and she did not file an application to dispute the Notice to End Tenancy. According to the landlords, the tenant has not moved out of the rental unit, but they said during the hearing that she was in the process of moving out. In addition to unpaid rent, the landlords have claimed for the cost to repair damage to the rental unit, although no repairs have been made and the tenant has not yet moved out.

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.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,980.00 against the tenant D.R. for the outstanding rent for November, December, January and February. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,030.00. The landlords' claim for the cost of repairs is dismissed with leave to reapply after the tenant has vacated

and the landlord has undertaken the required work. I order that the landlord retain the deposit and interest of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,580.00. 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: February 19, 2014

Residential Tenancy Branch

