



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Landlord also applied for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; the retaining of the Tenant’s security deposit; and to recover the filing fee from the Tenant for the cost of making the Application.

Both parties appeared for the hearing and provided affirmed testimony during the hearing. The Tenant confirmed receipt of the Landlord’s Application and written evidence which had been personally served to him on August 20, 2014. The Tenant did not submit any written evidence in advance of the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the Landlord’s monetary claim for unpaid rent?
- Has the tenancy been re-instated?

Background and Evidence

The Landlord testified and provided a written tenancy agreement which shows that this tenancy started on April 1, 2013 for a fixed term of one year after which it continued on a month to month basis. Rent payable under the agreement was established in the amount of \$2,200.00 on the first day of each month. The Tenant paid the Landlord a \$1,100.00 security deposit and a \$300.00 pet damage deposit on March 15, 2013. The Tenant agreed with these details.

The Landlord testified that the Tenant habitually paid rent late throughout the tenancy and in his written evidence the Landlord explains that the Tenant was issued a number of notices to end tenancy for unpaid rent including informal 'IOU' agreements for the Tenant to catch up with rent payments.

The Landlord testified that the Tenant had got into a habit of paying his rent on different days of each month and when the Tenant failed to pay any rent for July, 2014 by July 4, 2014, the Tenant was served with a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), by attaching it to the Tenant's door. A copy of the Notice attached to the Tenant's door was provided in written evidence and shows an expected date of vacancy of July 14, 2014 due to \$2,200.00 in unpaid rent due on July 1, 2014.

The Landlord explained that the Tenant failed to pay rent after the Notice was served. However, after the effective date of vacancy on the Notice, the Tenant made partial payments towards his rent eventually paying all the rent arrears as the Tenant had also not paid for August, September and October, 2014 rent. The Landlord confirmed during the hearing that the Tenant was no longer in rental arrears and had paid for October, 2014 rent but whenever the Tenant had made a payment since the issuing of the Notice, the Landlord had issued the Tenant with a receipt that stated that payment was being accepted for use and occupancy only.

The Tenant agreed with the Landlord's testimony but re-iterated that he was not in any rental arrears and therefore the tenancy should continue. When the Tenant was asked whether he had been issued a receipt for payments the Tenant had made after the effective date of the Notice, the Tenant confirmed that he was provided with a receipt and that it had on them that payment was for use and occupancy only.

The parties were unable to provide the exact dates the Tenant had made these payments.

The Landlord provided in written evidence a letter titled 'Notice' which was attached to the Tenant's door on July 23, 2014 which details the Landlord's frustration because of the Tenant's lack of July, 2014 rent payment.

Analysis

The Tenant confirmed receipt of the Notice on his door but was unable to confirm the exact date he had received it.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the vacancy date of the Notice.

The Landlord served the Notice by attaching it to the Tenant's door on July 4, 2014. Section 90(c) of the Act explains that a document attached to the door is deemed to have been received three days later.

As a result, I find that the Tenant was deemed serve the Notice on July 7, 2014 and had until July 12, 2014 to pay **all** the overdue rent or make an Application to dispute the Notice, as required by the Act and the instructions given to the Tenant on the Notice.

However, I find that the Tenant did neither, as evidenced by the letter served to the Tenant on July 23, 2014 explaining that no payment of rent had been made since this time.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession. As the Tenant has paid rent for October, 2014, the Order of Possession is effective for the end of October, 2014.

I also find that while the Tenant has paid all of the rental arrears, the Landlord issued the Tenant with a receipt that stated that payment was being accepted for use and occupancy only which was confirmed in the Tenant's oral testimony. Therefore, the tenancy was not re-instated by the acceptance of rent that the Tenant was liable for.

The Tenant relied on the fact that as he had paid all his outstanding rental arrears, the tenancy would re-instate itself automatically. A Tenant must understand that they only have a limited time under the legislation to act in order to cancel the Notice. Furthermore, it is a breach of the Act for a Tenant to repeatedly pay rent late throughout a tenancy and the Landlord has remedies under the Act to deal with this issue.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. As a result, I allow the Landlord to deduct this amount from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

As the Tenant has paid all of the rental arrears, the Landlord's monetary claim is dismissed.

Conclusion

For the above reasons, I grant the Landlord an Order of Possession effective **at 1:00 p.m. on October 31, 2014**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

The Landlord's monetary claim is dismissed.

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: October 15, 2014

Residential Tenancy Branch

