



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

This review hearing was scheduled in response to an Application for Direct Request (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord had made his original Application on November 24, 2014 through the Direct Request process which involves a non-participatory hearing based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

On December 3, 2014, the Arbitrator having conduct of this non participatory hearing rendered a written decision and issued the Landlord with an Order of Possession and a Monetary Order for unpaid rent in the amount of \$835.00. This finding was made on the basis that the Tenants had failed to pay full rent for the month of November 2014.

On December 9, 2014, one of the Tenants (“JS”) applied for a review of the Direct Request decision on the basis that it was obtained by the Landlord using fraud. The Arbitrator who had conduct of the Tenant’s review application determined that there was sufficient evidence to indicate that the Tenants had paid full rent for November 2014.

As a result, the Tenants were granted this review hearing which is now before me; the decision and orders dated December 3, 2014 were suspended until the outcome of this review hearing.

The Landlord appeared for this hearing with his Legal Counsel who provided submissions on the Landlord’s behalf. There was no appearance for the ten minute duration of this hearing by the Tenants. As a result, I continued to hear from the Landlord and his Legal Counsel on the outstanding matters below.

Legal counsel explained that the Landlord had come to know of this hearing through the service of the Notice of Review Hearing personally served to him by the other Tenant ("MD"). Legal counsel explained that it had come to their attention that the Tenant had been successful with the review application because she claimed to have rent receipts provided by the Landlord.

The Landlord denied receiving any rent from the Tenants or any evidence to support this claim. Legal Counsel submitted that the Landlord had not signed or completed any rent receipts for November 2014 rent and that they would be looking into this matter as a criminal fraud issue.

Legal Counsel explained that JS and MD were both Co-tenants in this tenancy under one agreement and that JS had failed to pay her portion of the rent to the Landlord. As a result, the Landlord served the Tenants with the Notice. The Landlord testified that MD had paid his portion of the rent but JS had not, even though she claimed in her review application that she did.

Legal Counsel explained that JS had now left the tenancy and MD had paid all of the outstanding rent under the tenancy agreement.

However, in the interim time period, the tenancy agreement in this case was ended with MD. The Landlord and MD then entered into a new tenancy agreement which is successfully continuing. It was confirmed that the Landlord no longer required the Order of Possession as the tenancy had ended and there were no outstanding rental arrears for this file.

Analysis and Conclusion

The Review Consideration Decision dated December 10, 2014 clearly stipulated that a failure to appear for this review hearing or a failure to serve the Landlord with the documents used to support the review application may result in the original decision and orders being re-instated.

Based on the undisputed testimony of the Landlord and the submissions of Legal Counsel, I find that the Tenant failed to provide the Landlord with the necessary documentation that was used to obtain this review hearing. The Tenant also failed to appear for the hearing to explain the documentary evidence that was used to achieve this hearing.

In considering what is to happen now to the original decision and orders dated December 3, 2014, Section 82(3) of the Act provides that following a review hearing, the original decision or order may be confirmed, varied or set aside.

In this case, while the Landlord would have been entitled to have the original decision and order confirmed, I find that as the tenancy has now ended and there are no rental arrears outstanding, it is more appropriate to set aside the findings and orders made on December 3, 2014.

Conclusion

For the reasons set out above, I set aside the decision and orders made by the original Arbitrator dated December 3, 2014 as they are no longer required by the Landlord.

This file is now closed.

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 13, 2015

Residential Tenancy Branch

