



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Leonic Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Although served with the landlord's application for dispute resolution and the notice of hearing by registered mail actually received on December 30, 2014, the tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced August 1, 2009, as six month fixed term tenancy and has continued thereafter as a month-to-month tenancy. At the start of the tenancy the monthly rent, which is due on the first day of the month, was \$820.00. Effective May 1, 2014, the monthly rent was increased to \$836.00. The tenant paid a security deposit of \$410.00.

The landlord testified that the tenant only paid \$626.00 for the May 2014 rent and did not pay any rent for June, July, August, September, October, November or December. Finally, on December 12, 2014, the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent claiming arrears in the amount of \$6132.00.

Shortly after the notice was posted the tenant provided the landlord with a cheque. Although the landlord was given considerable time during the hearing to search his records he was not able to provide the date of the payment or the amount. He thought the amount was the full arrears of rent. Unfortunately, this cheque was returned by the tenant's financial institution marked "NSF".

On December 23, the tenant provided the landlord with a new cheque in the amount of \$6167.00. This represented the full amount of the arrears plus a \$35.00 fee. This cheque did clear.

The landlord did not provide the tenant with a written receipt for the payment accepted on December 23.

The tenant has not paid the January rent.

Analysis

A tenant who is served with a 10 Day Notice to End Tenancy for Non-Payment of Rent has five days from the date the notice is received or is deemed by the statute to be received to pay the arrears in full or file an application for dispute resolution disputing the notice. A tenant who fails to do either is deemed to have accepted that the tenancy ends on the effective date of the notice.

The notice to end tenancy was posted on December 12 and is deemed received by the tenant on December 15. The tenant had until December 20 to pay the arrears in full and the effective date of the notice was December 25.

The tenant did make a payment. Whether it was made within or without the five day period is irrelevant because the cheque did not clear the bank. To put it simply, a bounce cheque is not payment.

The tenant did pay the arrears in full after the five day period had expired and before the effective date of the notice.

A landlord and tenant can agree to reinstate the tenancy if the tenant pays all or some of the rent after the five-day period has passed but before the tenant is required to vacate.

When a landlord accepts the rent for the period after the effective date of the notice the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only;
- whether the landlord specifically informed the tenant that the money would be for use and occupancy only; and,
- the conduct of the parties.

A landlord who has accepted all or part of the arrears after the five day period has elapsed but before the date the tenant was required to vacate, and who does not want the tenancy to continue, should:

1. Clearly tell the tenant that payment of rent outside the five-day period does not cancel the notice;

2. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
3. Tell the tenant that they must move out, as required by the Notice to End Tenancy at at the end of the month.

The simplest, and most common means of proving all of the above, is to give the tenant a receipt for payment received marked “for use and occupancy only”.

In this case there is no evidence of an explicit statement to the tenant that acceptance of the full amount of arrears did not amount to reinstatement of this tenancy. Accordingly, the landlord’s application for an order of possession is dismissed.

As the arrears claimed on the notice to end tenancy and on the application for dispute resolution have been paid in full the landlord’s application for a monetary order is also dismissed.

Of course, the landlord may serve the tenant with a new 10 Day Notice to End Tenancy for Non-Payment of Rent for any rent payment that may be late for the month of January or for any other month in the future and, if the tenant is consistently late in the payment of rent the landlord may serve the tenant with a 1 Month Notice to End Tenancy for Cause.

Conclusion

The landlord’s application is dismissed for the reasons set out above.

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 19, 2015

Residential Tenancy Branch

