



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 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 landlord and the named tenant called in and participated in the hearing. The tenant acknowledged at the hearing that he was served with the landlord's application for dispute resolution and Notice of Hearing package. The landlord submitted documents to the Residential Tenancy Branch by fax, but only a portion of the faxed documents were received, however, at the hearing I heard evidence with respect to the content of the missing documents.

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

This tenancy began on May 1, 2014. The rent is \$2,300.00 due in advance on the first day of each month. The tenants paid a security deposit of \$1,150.00 on April 29, 2014. The tenants did not pay rent for December when it was due. On December 18, 2014 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. After they received the Notice to End Tenancy the tenants paid the landlord the sum of \$2,300.00 by bank transfer. The payment was not made until January 5, 2015. The landlord testified that rent for January has not been paid and that the tenants owe a further \$200.00 in strata fines and \$150.00 in N.S.F. cheques charges. The tenant agreed that the amounts stated by the landlord are correct and the amounts are owed to the landlord. The tenants did not pay the December rent within five days of the receipt of the 10 day Notice to End

Tenancy; they have not paid rent for January and they did not file an application to dispute the Notice to End Tenancy. The landlord accepted the rent payment made on January 5th for use and occupancy only.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants 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 tenants do neither of these two things, the tenants are 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 tenants. 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 \$2,650.00 for the outstanding rent for January, a \$200.00 strata fine and \$150.00 in N.S.F. cheque charges. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,700.00. I order that the landlord retain the deposit of \$1,150.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,550.00. 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: January 22, 2015

Residential Tenancy Branch

