



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD 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 tenant called in and participated in the hearing. The tenant acknowledged that he was served with the application and Notice of Hearing and that he received a 10 day Notice to End Tenancy from the landlord dated December 2, 2014.

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 in September, 2014. The rent is \$750.00 due in advance on the first day of each month. The tenant paid a security deposit of \$3750.00 at the start of the tenancy. The tenant did not pay rent for December when it was due. The tenant's cheque in payment of December's rent was dishonoured and returned to the landlord marked "NSF". On December 2, 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 December or for January and he did not file an application to dispute the Notice to End Tenancy.

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. The tenant acknowledged at the hearing that he received the Notice to End Tenancy and that the rent is unpaid. The tenant said that he hoped to have the rent arrears to give to the landlord shortly and that he wishes to continue the tenancy. The landlord is unwilling to continue the tenancy even if rental arrears are paid, but she would be prepared to give the tenant until February 28th to move provided the arrears and February rent are paid.

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. It is within the landlord's discretion to determine whether to give the tenant an additional month to move.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1500.00 for the outstanding rent for December and January. The landlord is entitled to recover an NSF cheque charge of \$50.00 plus the \$50.00 filing fee for this application for a total award of \$1,600.00. I was not provided with a copy of a tenancy agreement and I therefore dismiss the landlord's claim for contractual late fees. I order that the landlord retain the deposit and interest of \$375.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,225.00. 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 27, 2015

Residential Tenancy Branch

