



Dispute Resolution Services

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 to retain the security deposit. The landlord represented herself in the conference call hearing and the tenants were both represented by the tenant SV.

At the hearing, SV continually interrupted both me and the landlord and continued to do so despite several warnings. At the end of the hearing, I had to mute SV as she would not heed my cautions. SV disconnected from the hearing prior to its end but after all testimony had been given.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on December 1, 2011 at which time the tenants paid a \$350.00 security deposit and rent was set at \$700.00 per month. The tenants did not pay the full amount of rent when it was due on February 1, 2015 and on February 2, the landlord personally served them with a 10 day notice to end tenancy for unpaid rent (the "Notice"). On February 14, the tenants paid all but \$30.00 of the outstanding balance and the landlord gave them a receipt for the payment indicating that the payment was accepted for use and occupancy only. The tenants paid their rent in March and again, the payment was accepted for use and occupancy only.

SV made repeated comments at the hearing that she felt she did not deserve to be evicted as other tenants were causing significant disturbances, the rental unit was not kept in good condition and she had paid most of the outstanding rent. I explained to SV that the only issue we would address at the hearing was the question of rent as the other matters were not relevant.

The landlord seeks an order of possession, a monetary order for the \$30.00 in outstanding rent and recovery of the \$50.00 filing fee paid to bring her application.

Analysis

I find that the tenants were obligated to pay \$700.00 in rent in advance on the first day of each month and that they failed to pay the full amount in February. I find that they received the Notice on February 2 and did not make any rental payments until February 14. Section 46(4) of the Act provides that when tenants receive a notice for unpaid rent, they have 5 days in which to either dispute the notice or pay the arrears in full. If the rent is paid in full within 5 days, the notice is cancelled. In this case, the tenants neither disputed the notice nor paid the full amount of arrears within 5 days. Section 46(6) provides that when tenants neither dispute nor pay the arrears, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and I find that the landlord is entitled to an order of possession. Although \$30.00 is still outstanding, because the landlord accepted rent for use and occupancy for March, I find it appropriate to make the order effective March 31, 2015. The tenants must be served with the order. Should they fail to comply, it may be filed in the Supreme Court for enforcement.

The parties agreed that the tenants are still \$30.00 in arrears. I award the landlord \$30.00. I find that as the landlord has been successful in her application, she is entitled to recover the \$50.00 filing fee paid to bring the application and I award her that sum. I order the landlord to retain \$80.00 from the \$350.00 security deposit in full satisfaction of her monetary claim. The remaining \$270.00 should be dealt with at the end of the tenancy in accordance with the provisions of the Act.

Conclusion

The landlord is granted an order of possession and will retain \$80.00 from the security deposit.

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: March 10, 2015

Residential Tenancy Branch

