



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on May 26, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant failed to claim the mail and it was returned to the landlord.

A failure to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served effective May 31, 2015 in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The landlord testified that he supplied 18 pages of evidence to the Residential Tenancy Branch on May 20, 2015. The on-line application appears to have been made on May 22, 2015.

The landlord was at liberty make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on January 1, 2014. Rent is now \$1,025.00 due on the last day of each month. A security deposit in the sum of \$500.00 was paid.

The landlord stated that on May 2, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of May 16, 2015, was served to the tenant. On May 2, 2015 the landlord posted the Notice to the tenant's door, with a witness present. Service occurred at 3 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,050.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days. The Notice include a \$25.00 late fee.

After May 20 and before June 1, 2015 the tenant paid the May 2015 rent owed. The tenant also paid the registered mal costs and filing fee. All rent is paid to date. The landlord said the tenant has been repeatedly issued 10 day Notices as he is not paying the rent on time.

The landlord told the tenant he must pay the hearing costs and provide post-dated cheques. The landlord told the tenant that he expected the tenant to meet these conditions and to pay future rent on time. The tenant paid the costs and rent but has not provided the post-date cheques.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on May 5, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 5, 2015, I find that the earliest effective date of the Notice was May 16, 2015.

I find that the tenant did not pay the rent owed within five days of May 5, 2015.

I have then considered the payment of the rent and the intention of the landlord. Residential Tenancy Branch (RTB) Policy (#11) provides guidance on waiver of a Notice to end tenancy. If a landlord accepts rent for the period after the effective date of a 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 occupation only, and
- the conduct of the parties.

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his rights.

The landlord confirmed that he told the tenant future rent must be paid on time and that the hearing costs must be covered and post-dated cheques given to the landlord. I find that the tenant would then have reasonably understood the tenancy could continue. The tenant has complied with the agreement set out by the landlord, with the exception of the provision of the post-dated cheques.

Since the landlord has implied the tenancy would continue I find that the Notice ending tenancy issued on May 2, 2015 is cancelled and the tenancy is reinstated. However, the tenant should now provide the landlord with post-dated rent cheques; part of the agreement that led the landlord to continue the tenancy.

Therefore, the application is dismissed.

Conclusion

The application is dismissed. The Notice ending tenancy issued on May 2, 2015 is cancelled. The tenancy is reinstated.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 09, 2015

Residential Tenancy Branch

