



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Management
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 for unpaid rent. The hearing was conducted by conference call. The landlord's representatives and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

This tenancy began on April 1, 2015. The rent is \$1,100.00 due in advance on the first day of each month. The Tenant moved into the rental unit from a different rental unit in a building across the street from the rental property, also owned by the landlord. There is apparently a written tenancy agreement but a copy was not submitted as evidence by either party. The landlord and the tenant do not agree about the payment of a security deposit. The landlord's representative Mr. G.M. testified that it was his understanding that the tenant's deposit of \$375.00 was transferred to his new tenancy. The tenant said that the rental unit was rented by his girlfriend; he moved in with her in April and a new tenancy agreement was made naming him as the sole tenant. He testified that he made an additional payment to the landlord when he moved to the new unit, raising his deposit to \$550.00. He complained that the landlord has not returned the security deposit paid by his girlfriend when her tenancy ended in April.

The landlord's representative testified that the tenant paid rent for April in the amount of \$1,100.00, but he failed to pay rent for May. On May 7, 2015 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenant did not pay rent for June and he did not file an application to

dispute the Notice to End Tenancy. The landlord's representative testified at the hearing that the tenant has paid rent for July and August. At the hearing the tenant testified that he withheld rent payments for May and June because the landlord owes him money for work he has performed for the landlord, for personal property taken from his previous rental unit and for compensation for rent paid over the past 10 years for his previous apartment. The tenant has filed an application for dispute resolution to claim a monetary award with respect to these matters which are related to his previous tenancy. The application is set for hearing by conference call on November 5, 2015.

At the hearing the landlord's representative proposed that if the tenant paid the outstanding rent within a reasonable period of time the landlord would be prepared to continue the tenancy. The landlord requested an order for possession effective August 31, 2015 based on the fact that the tenant has paid rent for August even though there are two months of arrears outstanding. The landlord's representative said the landlord is prepared to reinstate the tenancy if the rent is paid in full by August 31st, otherwise it will proceed to enforce the order for possession.

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 landlord's application for dispute resolution was filed on June 18th and I find that the rent payments for July and August were not accepted so as to reinstate the tenancy.

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 August 31, 2015, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The landlord has the discretion to withhold enforcement of the order and reinstate the tenancy if the tenant pays the rental arrears before the effective date of the order.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$2,200.00 for the outstanding rent for May and June. The landlord is

entitled to recover the \$50.00 filing fee for this application for a total award of \$2,250.00 and I grant the landlord an order under section 67 in the said amount. 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: August 14, 2015

Residential Tenancy Branch

