



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Windsor Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, OPR, 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's representatives called in and participated in the hearing. The tenant did not attend the hearing, but he was represented by a friend who attended and spoke on his behalf..

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 September 1, 2012, initially for a six month term and thereafter on a month to month basis. The current monthly rent is \$797.00, payable on the first day of each month. The tenant paid a security deposit of \$390.00 at the start of the tenancy. The tenant did not pay rent for July when it was due. On July 2, 2014 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. Since he received the Notice to End Tenancy the tenant After he received the Notice to End Tenancy the tenant made three rent payments; he paid \$500.00 on July 17, 2015. He paid a further \$322.00 on July 30th. And he paid \$260.00 on August 31st. The tenant's payments were accepted "for use and occupancy only". The tenant did not file an application to dispute the Notice to End Tenancy.

The tenant's friend testified that the tenant has had some financial difficulties and was temporarily unemployed. He was unable to attend the hearing because he could not take time from work to participate. The tenant's friend said that the tenant would be able to provide funds to pay the rental arrears and he wanted to continue the tenancy.

The landlord's representative testified that the tenant has often been late paying rent and the landlord does not wish to continue the tenancy. The landlord's representative requested an immediate order for possession. She said that the landlord was unwilling

to allow the tenant to have until the end of the month to move, even if he paid rental arrears. The landlord's representative requested a monetary order including an amount for loss of revenue for October and late fees of \$25.00 per month for each month.

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.

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.

Monetary Order and Security Deposit – The tenant paid a total of \$1,082.00 in three instalments on account of the rent for July, August and September. I find that the landlord has established a total monetary claim of \$1,309.00 for the outstanding rent for July, August and September. There is no basis for the landlord's claim for loss of revenue for the month of October and in any event this claim was not made in the application. The landlord is entitled to recover a late charge of \$25.00 for each of three months as provided by the tenancy agreement as well as the \$50.00 filing fee for this application for a total award of \$1,434.00. I order that the landlord retain the deposit and interest of \$390.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,044.00. 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: September 16, 2015

Residential Tenancy Branch

