



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remi Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person on or about October 13, 2015 in accordance with Section 89 of the Act. The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in 2013. Rent of \$1,050.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$525.00 as a security deposit from the Tenant. The Tenant owed arrears and failed to pay rent for September 2015 and on September 30, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The effective date set out in the Notice is October 11, 2015. The Tenant has not made an application for dispute resolution. On

September 30, 2015 the Tenant paid \$3,000.00 towards the arrears and has paid October, November and December 2015 rent as it was due. The Tenant also paid a further \$500.00 towards the arrears leaving \$2,800.00 owing. The Landlord did not issue any receipts for use and occupancy for any of the monies received. The Landlord told the Tenant at some point that "sometimes you have to take care of this (rent owing). . ."

Analysis

Residential Policy Guideline # 11, Amendment and Withdrawal of Notices provides that where a landlord accepts rental monies after the effective date of a notice to end tenancy for unpaid rent, the intention of the parties in relation to the notice to end tenancy will become an issue to be determined. Based on the Landlord's evidence that the Tenant continued to pay rent as it was due after the effective date of the tenancy and that no receipts indicating acceptance of the rental monies for "use and occupancy only" were given to the Tenant, considering that the Landlord continued to accept rent after serving the application for dispute resolution and considering that the Landlord's has no positive oral evidence that clarifies the Landlord's intention in relation to the notice to end tenancy, I find that the Landlord has acted to waive or abandon the notice to end tenancy. As such I find that the Landlord is not entitled to an order of possession and I dismiss this claim. I dismiss the Landlord's claim for unpaid rent with leave to reapply and the Landlord is at liberty to issue another notice to end tenancy for any outstanding rents payable. As the application has not had any merit I decline to award recovery of the filing fee.

Conclusion

The Landlord's claim for an order of possession and recovery of the filing fee is dismissed. The Landlord has leave to reapply for unpaid rent.

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: December 09, 2015

Residential Tenancy Branch

