



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DBA 2115 Triumph Apts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR; MNR

Introduction

This is the Landlord's Application for Dispute Resolution seeking an order of possession and a monetary award for unpaid rent. This matter was adjourned from a Direct Request proceeding held on October 21, 2016. The Adjudicator adjourned the proceeding in accordance with the provisions of Section 74 of the Act in order to determine the details of the Landlord's Application.

Both parties attended the teleconference and gave affirmed testimony.

The Landlord's agent DF testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were delivered to the Tenant by hand on November 3, 2016.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and Monetary Order?

Background and Evidence

This tenancy began on May 1, 2015. Monthly rent is \$820.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$410.00 at the beginning of the tenancy.

On October 2, 2016, DF issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). DF served the Tenant with the Notice, by hand delivering a copy to the Tenant, on October 2, 2016.

The Tenant did not make an application to cancel the Notice.

The Tenant has paid the outstanding rent, but not within 5 days of receipt of the Notice. The Tenant has also paid rent for the months of November and December, 2016. The Landlord provided the Tenant with receipts “for use and occupancy only” and advised the Tenant that he was not reinstating the tenancy.

DF asked for an Order of Possession, effective February 28, 2017, in order to allow the Tenant more time to find suitable accommodation, on the condition that the Tenant pays \$820.00 for each of the months of January and February, 2017, for use and occupancy of the rental unit.

Analysis

Section 46(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[reproduced as written]

In this case, the time limit for paying the rent or making her application was October 12, 2016. Based on the evidence provided, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on October 12, 2016.

The Tenant has paid for use and occupancy of the rental unit until December 31, 2016. Therefore, I dismiss the Landlord’s request for a Monetary Order.

Conclusion

The Landlord’s application for a Monetary Order is **dismissed**.

I find that the Landlord is entitled to an Order of Possession. I find that the **tenancy ended on October 12, 2016** and I find that the Landlord is entitled to an Order of Possession effective **2 days after service of the Order upon the Tenant**. However, the Tenant has paid for use and occupancy of the rental unit until December 31, 2016,

and the Landlord gave his undertaking that he would not enforce the Order of Possession until February 28, 2017, if the Tenant paid for use and occupancy for the months of January and February, 2017.

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 14, 2016

Residential Tenancy Branch