



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRINCESS DAPHNE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, OPR, FF

Introduction

The applicant seeks an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent dated and received December 2, 2016 and for a monetary award for unpaid rent.

The tenant Mr. J.B. corrected the landlord's version of his name. The style of cause has been amended accordingly.

The application omitted the name of the landlord PDA in its final version. The applicant Ms. S.V. is the building manager and agent of PDA, the landlord giving the Notice in question. It was added as an applicant in the style of cause.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the ten day Notice resulted in an end to this tenancy? What if anything is the landlord owed as rent?

Background and Evidence

The rental unit is a one bedroom apartment in a 57 unit apartment building.

There is no written tenancy agreement. The tenant says he moved in in 2011 or 2012.

Ms. S.V. says the rent is \$630.00 per month. The tenant says it's \$660.00. It's due on the first of each month.

The parties agree that the landlord holds a \$330.00 security deposit.

The ten day Notice claims the tenant failed to pay \$880.00 in rent due December 1, 2016. The tenant admits that. He has not paid that full amount since. He has not applied to dispute the Notice.

The tenant says he paid the landlord \$400.00 or \$450.00 in mid December. Ms. S.V. denies it. The tenant says he has a receipt for the payment. He has not filed a copy for this hearing and could not find it during this hearing.

The tenant admits that he has not paid January or February rent. It was proposed that the landlord's claim be amended to include those debts but the tenant declined, considering that he contemplated his own application for a monetary award for deficiencies in his rental unit.

Analysis

I find that the rent is \$660.00, based on Mr. S.V.'s admitted error and on the amount of the deposit money, usually exactly equivalent to one half month's rent.

I find that the tenant has failed to prove any payment of rent money since he received the ten day Notice on December 2, 2016. Had he filed a signed receipt as evidence, this finding would have been different.

Section 46 of the *Residential Tenancy Act*, is strict. Once a tenant receives a ten day Notice, he has five days to either pay the amount claimed in it, thus voiding the Notice, or to make an application to cancel the Notice. He has done neither here. As a result, the tenant has been "conclusively deemed" to have accepted the end of the tenancy under s. 46.

This tenancy ended December 13, 2016 by operation of law and the landlord is entitled to an order of possession.

The tenant admits that he owes the landlord \$880.00 from December 1, 2016. By accident the landlord has only claimed \$630.00 in this application. I amend the landlord's claim and I award it the amount of \$880.00, plus recovery of the filing fee.

Conclusion

The landlord's claim is allowed. It is awarded \$880.00 plus recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$330.00 security deposit it holds, in reduction of the award. There will be a monetary order against the tenant for the remainder of \$650.00.

The landlord will have an order of possession.

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: February 07, 2017

Residential Tenancy Branch