



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR FF

Introduction:

Only the landlord's agent attended the hearing and gave sworn testimony. She said the 10 Day Notice to end Tenancy dated August 10, 2017 to be effective August 25, 2017 was served by taping it on the door and the Application for Dispute Resolution by registered mail (number provided). I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord's agent attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 5, 2017, a security deposit and pet damage deposit, each in the amount of \$1500 (total \$3,000) was paid and rent is currently \$3000 a month. The landlord provided evidence from the bank that the tenant's deposit was NSF in August and September 2017 and the tenants ceased the preauthorized payments in October. The agent submitted evidence that the tenant paid from the outstanding balance \$1,000 in August, \$2260 in September and \$2260 in October. Total rent owed was \$9,000 for 3 months). The agent provided bank statements and the tenancy agreement to support that the tenants currently owe \$1780 in outstanding rent. The agent said the landlord accepted the money through their bank but did not issue receipts stating that the tenancy had ended and payments were accepted "for use and occupancy only".

The landlord requests a monetary order and an Order of Possession. When I discussed the problem of waiver by accepting rent money without limiting it to use and occupancy, the landlord queried how they can proceed further. I advised another Notice to End Tenancy might be issued in November if rent is outstanding and if payments are made subsequently, the landlord should issue receipts limiting them to use and occupancy. In the alternative, I pointed out that section 47 of the Act provides for a One Month Notice to End Tenancy for cause. One of the causes is 'repeated late payment of rent' and subsequent payment in that case does not imply a waiver of the notice so does not have to be receipted 'for use and occupancy only'.

In evidence is the 10 Day Notice to End Tenancy, proofs of service, a registered mail receipt and bank statements.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

As explained to the landlord's agent in the hearing, the landlord has by implication waived their Notice to End Tenancy dated August 10, 2017 by accepting further payment of rent without limiting it.

Residential Policy Guideline 11 states

The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. ..

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the **receipt shows the money was received for use and occupation only.***
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

I find the Notice to Tenancy is void at the landlord by implication waived it. No receipt limiting the payments for use and occupancy were issued and I find the landlord did not specifically tell the tenant this. The tenancy is continued until legally ended in accordance with the Act.

Monetary Order

I find that there are rental arrears in the amount of \$1780 representing rental arrears from unpaid balances from August to October 2017.

Conclusion:

I find the landlord not entitled to an Order of Possession for the reasons stated above. I find the landlord is entitled to a monetary order for rent arrears as calculated below and to recover filing fees paid for this application. The security deposits will remain in trust to be dealt with pursuant to section 38 of the Act when the tenancy is ended.

Calculation of Monetary Award:

Rent arrears from August 2017 to October 2017	1780.00
Filing fee	100.00
Total Monetary Order to Landlord	1880.00

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: October 12, 2017

Residential Tenancy Branch