



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, 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 amended in the hearing, as follows:

1. An Order of Possession - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged receiving the evidence of the other. The landlord testified that the amended application reflects that all payable rent has been paid and is current to May 31, 2013.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The relevant undisputed evidence in this matter is as follows. The tenancy began in 2006. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425.00. The *current* payable rent in the amount of \$898.00 is due in advance on the first day of each month. The tenant failed to pay all the payable rent in the month of April 2013, and on April 02, 2013 the landlord personally served the tenant with a Notice to End tenancy for non-payment of rent (the Notice) and gave the tenant a receipt for the amount paid for *use and occupancy only*. The parties agree that on April 02, 2013 the tenant then offered to pay all outstanding rent in cash, but the

landlord refused to accept it. As a result, on April 06, 2013 the tenant gave the landlord another cheque – satisfying the remaining rent and the landlord again gave the tenant a receipt for the amount paid for *use and occupancy only*. Subsequently the tenant's cheques were determined to be NSF and the tenant was instructed to satisfy the remaining rent by one of the only means accepted by the landlord – which the tenant did via a money order, for which the landlord again gave the tenant a receipt for the amount paid for *use and occupancy only*. The tenant testified that they did not notice at first that the landlord's receipts were for *use and occupancy only*. They also testified that in good faith they gave the landlord cheques they thought were valid, and consequently attempted to satisfy their rent in full once they learned their cheques were NSF.

The landlord further testified that this is not the first time the tenant has paid the rent later than when due.

Analysis

Based on the testimony and document evidence of both parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent on April 02, 2013. I find the Notice provided for the tenant to pay the outstanding rent within 5 days of receiving the Notice, which in that case the Notice would become null and void. The landlord did not adequately explain why payments toward rent during this period of 5 days were (receipted) accepted by the landlord for *use and occupancy only* when the tenant legally had 5 days to satisfy the rent. I accept the tenant was prepared to pay the rent in cash, but it was refused. I find that after a landlord gives a tenant a Notice to End the tenancy for non-payment of rent they may prefer not to accept cash, but cannot refuse legal tender from the tenant to satisfy the rent when under threat of eviction for not doing so. I further accept that after the tenant initially paid all the rent by cheque within the required time the tenant did not determine it necessary to dispute the Notice.

Based on the above facts, and as a result of all the above, I find that while the landlord may have issued a Notice to End for unpaid rent, the tenant's attempt to resolve the arrears by paying cash under threat of eviction were thwarted. I also accept the tenant thought they were not required to file for dispute resolution within the required time to do so. I am satisfied that ultimately the parties resolved the issue of rent by way of the landlord's preferred method of receiving it. For all the above reasons I find the tenancy could have been reinstated to the parties satisfaction within the 5 days permitted under Section 46 of the Act. As a result, I find the landlord **is not** entitled to an Order of Possession. None the less, it must be noted the tenant has come perilously close to losing their tenancy. The landlord may have recourse in respect to the purported late payments of rent.

Conclusion

The landlord's application **is dismissed**, without leave to reapply, and the tenancy continues.

This Decision is final and binding on both parties.

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: May 16, 2013

Residential Tenancy Branch

