



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPB, OPR

Introduction

This is an application brought by the Landlord(s) requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, requesting a monetary Order, and requesting an Order to keep the full security deposit towards the claim. The applicant is also requesting recovery of the \$100.00 filing fees

A substantial amount of documentary evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

At the beginning of the conference call the landlord testified that the tenant has now paid the full outstanding rent and utilities, and therefore the remaining issue I dealt with is whether or not to issue an Order of Possession.

Background and Evidence

The landlord testified that on April 3, 2016 she personally served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent and utilities.

The landlord further testified that, more than a month later, on May 6, 2016, the tenant finally paid the full outstanding rent and utilities, and that she gave a receipt to the tenant for use and occupancy only.

The landlord further testified that the tenant has not filed a dispute of the April Notice to End Tenancy, and therefore she is requesting an Order of Possession for as soon as possible.

The tenant testified that he did receive the 10 day Notice to End Tenancy dated April 3, 2016, however it was dealt with in a previous dispute resolution hearing and the Arbitrator canceled the notice.

The tenant is therefore requesting that the landlord's application be dismissed, as the full outstanding rent and utilities have been paid.

Analysis

I have reviewed the Arbitrator's decision from the previous hearing, and it is my finding that the April 3, 2016 Notice to End Tenancy was not dealt with in that previous hearing. The notice dealt with in the previous hearing was a 10 day Notice to End Tenancy that was served on March 16, 2016 and it was that March 16, 2016 Notice to End Tenancy that was canceled..

Section 46 of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(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.

In this case since the tenant was served with a 10 day Notice to End Tenancy on April 3, 2016, and did not pay the overdue April 2016 rent until May 6, 2016, and did not apply for dispute resolution, the tenant is conclusively presumed to have accepted the end of the tenancy.

The tenant has argued that he has paid the full outstanding rent and therefore the notice should be canceled, however the money was not paid within the five day grace period, and was accepted for use and occupancy only, and therefore did not reinstate the tenancy.

It is my decision therefore that the landlord has the right to an Order of Possession and the recovery of her filing fee.

Conclusion

Pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession that is enforceable two days after service on the tenant.

Pursuant to section 72 of the Residential Tenancy Act, I have issued a monetary Order in the amount of \$100.00 for recovery of the filing fee.

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: June 01, 2016

Residential Tenancy Branch