



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession and recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy under written agreement started on July 1, 2013. Subsidized rent of \$1,004.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$520.00 as a security deposit. The Tenant failed to pay the rent on February 1, 2020 and on February 4, 2020 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Notice sets out \$1,004.00 in unpaid rent and an automatically corrected effective date of February 17, 2020.

The Landlord states that the February 2020 rent was paid in full on February 27, 2020 and that the Tenant was issued a receipt for “use and occupancy only”. The Landlord

states that full rent for March and April 2020 as well as rent due May 1, 2020 was received by the Landlord late yesterday. The Landlord states that it did not subsequently speak with the Tenant about the Landlord's acceptance of these rental monies. The Landlord states that no receipt for use and occupancy was issued as this is done by the head office and it has yet to issue that receipt.

The Tenant states that it believed the tenancy would continue with the payment of the rent. The Tenant states that last week the Landlord was offered a cheque for the full amount however the Landlord refused this payment informing the Tenant that they would only accept a money order. The Tenant states that due to long line-ups at the bank it took some time to obtain the money orders required for the full payment. The Landlord states that the Tenant has been repeatedly late paying rent over the past year.

Analysis

Section 46 of the Act provides that 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. If a landlord accepts rent after the effective date of the notice to end tenancy, the intent of the parties will determine whether the tenancy has been reinstated. It is undisputed evidence that the Landlord refused a cheque for the rent and then later accepted rent by money order. It is undisputed that the Landlord accepted this payment without issuing a receipt for use and occupancy. Had the Landlord continued its intention to end the tenancy at the time the Tenant spoke with the Landlord and offered payment the Landlord could have accepted the cheque and could have issued the receipt. In these circumstances, as the Landlord did not issue a receipt for use and occupancy for the payment of rent, including rent that is not yet due, and given the Tenant's evidence of a belief that the payment as required by the Landlord would enable the tenancy to continue, I find on a balance of probabilities that the tenancy was reinstated. As a result, I dismiss the Landlord's claim for an order of possession and recovery of the filing fee.

Section 3(1) of the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*) issued March 30, 2020 (the “Ministerial Order”) provides that despite sections 44 (1) (a) (ii) to (vi) and sections 46 to 49.1 of the Act or any other section of the Act, the Residential Tenancy Regulation or any term of a tenancy agreement, a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect. If the Tenant has been repeatedly late paying rent the Landlord is at liberty to issue a one month notice to end tenancy for cause pursuant to section 47 of the Act once the Ministerial Order is no longer in effect.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 1, 2020

Residential Tenancy Branch