



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, MNDC, FF

Introduction

This was a review hearing held as the result of a review consideration decision issued on December 8, 2011, which suspended the monetary Order and Order of possession issued on November 17, 2011.

The landlord had applied requesting an Order of possession as the result of a breach of an agreement with the landlord; compensation for loss of rent revenue and filing fee costs. The landlord's application was successful and Orders were issued for possession of the unit and compensation in the sum of \$2,000.00 for loss of rent revenue plus filing fee costs.

The review consideration decision issued on December 8, 2011, instructed the tenant to serve the landlord with Notice of the review hearing within 3 days of receiving the decision and Notice of reconvened hearing.

Both parties were present at this review hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

Preliminary Matters

The tenant provided affirmed testimony that he did not receive the landlord's evidence that was considered during the November 17, 2011, hearing. That evidence was set aside and the parties were at liberty to provide oral testimony.

The tenant requested an adjournment, as he wished to obtain evidence of asbestos that had been removed from the home. The request for an adjournment was declined, as the tenant's claim there was asbestos had no relationship to the matter before me. The tenant requested I order the landlord to produce an asbestos report on the property; this was declined.

The tenant was informed that if he had a claim he must submit an application and set out his claim to the respondent. In the absence of an application, I refused to hear submissions from the tenant in relation to asbestos.

Issue(s) to be Decided

Should the decision issued on November 17, 2011, providing the landlord with a monetary Order in the sum of \$2,050.00 for loss of one month's rent revenue plus filing fee costs and an Order of possession be confirmed, varied or set aside.

Background and Evidence

The tenancy commenced in April 2011, for a 6 month fixed term ending on October 20, 2011, at which point the tenant was required to vacate the unit. Rent was \$2,000.00 per month due on the 20th day of each month.

The landlord requested an Order of possession based on the tenant's breach of the term requiring him to vacate. The landlord has requested a monetary Order for loss of rent revenue from October 20 to November 19, 2011.

The tenant stated that he over-held beyond October 20, 2011, as the result of his suspicion that the house had asbestos. The tenant stated he had to delay the move, in order to minimize exposure to asbestos. The tenant stated he left the keys at the unit on December 9 or 10, 2011.

Analysis

There was no evidence before me that the tenant had an Order allowing him to over-hold and not pay rent to the landlord.

I found the tenant's submission that he over-held as the result of asbestos in the unit lacked any credibility. The tenant provided no evidence of asbestos and, if he had, it would seem reasonable he would have wished to vacate the unit prior to the end of the fixed-term, not beyond the date he was required to provide the landlord with vacant possession. The tenant did not apply requesting an Order allowing him to over-hold, rent-free.

Therefore, I find, on the balance of probabilities, that the decision issued on November 17, 2011, is confirmed. The Order of possession is no longer required as the landlord now has possession. The monetary Order in the sum of \$2,050.00 for loss of rent revenue from October 20, to November 19, 2011, inclusive, plus filing fees is of full force and effect.

Conclusion

The decision and Orders issued on November 17, 2011, are confirmed and of full force and effect.

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: December 30, 2011.

Residential Tenancy Branch