



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession, a monetary order and an order permitting them to retain the security deposit. Despite having been personally served with the application for dispute resolution and notice of hearing on November 20, the tenant did not participate in the conference call hearing.

The landlords originally named S.L. as a respondent. Because the tenancy agreement states that S.L. is “not responsible for tenancy”, I found that she is neither a tenant nor a guarantor and I dismiss the claim as against her. I have amended the style of cause to reflect this decision.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The landlord’s undisputed testimony is as follows. On November 6, the landlord personally served the tenant with a one month notice to end tenancy for cause (the “Notice”). Rent is set at \$495.00 per month and at the outset of the tenancy, the tenant paid a \$250.00 security deposit.

The landlord seeks an order of possession based on the Notice.

The landlord testified that the tenant failed to pay rent in the month of December and he seeks to recover \$495.00. The landlord further testified that the tenant has created graffiti throughout the interior of the rental unit. The landlord provided photographs of the condition of the unit and testified that in early November, he asked the tenant to remove the graffiti and although the tenant promised to do so within a few weeks, he failed to act. The landlord estimated that it will take \$200.00 in supplies and labour to remove the graffiti and repaint the affected areas and he seeks an award for this cost.

The landlord further seeks to recover the anticipated cost of carpet cleaning and the cost of replacing light bulbs and fixtures. He also seeks to recover the \$50.00 filing fee paid to bring this application.

Analysis

Section 47(6) of the Act provides that if a tenant does not dispute a notice given under that section within 10 days, he is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I find that the tenant received the Notice on November 6, he did not dispute the Notice and he is therefore conclusively presumed to have accepted the end of the tenancy. The Notice identifies the effective date as December 6. Under the Act, a notice cannot take effect earlier than the end of the following rental period from the time that it is served, which means that the Notice is not effective until December 31. Section 53 of the Act operates to automatically change incorrect effective dates. I find that the Notice is effective on December 31 and I grant the landlord an order of possession effective on that date. The tenant must be served with the order. If the tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

I find that the tenant failed to pay rent in December and that the landlord is entitled to recover that rent. I award the landlord \$495.00.

Because the landlord specifically asked the tenant to clean the graffiti from the walls and the tenant failed to do so, I find it unlikely that the tenant will perform that task prior to the end of the tenancy. I find the landlord's estimate to be reasonable and I award him \$200.00 as the cost of cleaning and repainting the walls.

The landlord acknowledged that he has not specifically requested that the tenant clean carpets or replace light bulbs and light fixtures. As the tenancy will not end for several weeks, the tenant will still have an opportunity to perform that cleaning and those repairs and I find that the application for the cost of performing those tasks is premature. I dismiss these claims with leave to reapply.

As the landlord has been substantially successful, I find that he is entitled to recover the \$50.00 filing fee.

The landlord has been awarded a total of \$745.00. I order the landlord to retain the \$250.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$495.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$495.00. The landlord will retain the security deposit.

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 19, 2012

Residential Tenancy Branch