



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fireside Property Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This was a Review Hearing with respect to the landlord's application for an order for possession and a monetary order for unpaid rent. The original hearing was scheduled to be heard by conference call on February 6, 2013. The landlord attempted to call into the conference call hearing, but was unsuccessful due to a problem with the conference call system. The landlord applied for and was granted a review of the original decision. The original decision was suspended pending the outcome of the review hearing. I was appointed to conduct the review hearing by holding a new hearing. The hearing was conducted by conference call. The landlord's representative called in and participated in the hearing. The tenant did not attend although he was personally served with Notice of the Review Hearing on February 22, 2013.

Issue(s) to be Decided

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Abbotsford. The tenancy began in November, 2010. The tenant moved to another unit in the rental property and a new tenancy agreement was created commencing January 17, 2011. The current monthly rent is \$710.00. According to the landlord's representative and as set out in the latest tenancy agreement, the tenant paid a \$350.00 security deposit on January 17, 2011.

The tenant failed to pay several rent payments and as of January 2013 the tenant owed \$2,615.00 in rent. On January 3, 2013 the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit.

On January 23, 2013 the landlord agreed to accept monthly payments of \$810.00 until the arrears were paid, but if the tenant did not make the payments the agreement would be void and the tenant would be required to immediately pay in full or vacate the rental unit. The tenant did not make any payment after the agreement with the landlord and the landlord personally served the tenant with the application for dispute resolution and Notice of Hearing on January 23, 2103.

The tenant paid the landlord two payments on February 20, 2013, one in the amount of \$570.00 and the other in the amount of \$810.00. The payments were accepted for use and occupancy only. The landlord submitted a ledger showing that the rental amount now outstanding is the sum of \$2,655.00; this amount takes into account the recent payments and includes the rent for March. The landlord requested a monetary order in the said amount and an order for possession effective March 31, 2013.

Analysis and conclusion

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant's rent payment was accepted for use and occupancy and the tenant was advised he must move out; I find that the original decision dated February 5, 2013 dismissing the landlord's claims should be set aside and I find that the landlord is entitled to an order of possession effective March 31, 2013, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$2,655.00 for the outstanding rental arrears. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,705.00. I order

that the landlord retain the deposit and interest of \$350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,355.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 12, 2013

Residential Tenancy Branch

