



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlord's application of April 23, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on April 9, 2012 by posting on the tenant's door. The landlord also sought a monetary award for unpaid rent, loss of rent, parking and late fees, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

Despite having made the application, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing while the hearing was attended by the tenant's mother as his guarantor.

Therefore, in the absence of the applicant landlord with attendance by the tenant, the application is dismissed without leave to reapply.

Prior to the hearing, the guarantor had submitted into evidence correspondence with the landlord's agent, AP. The guarantor had, on receiving the notice of hearing, advised the agent of her desire and willingness to settle matters without the need for a hearing.

The tenant had dutifully honored the Notice to End Tenancy by vacating the rental unit on April 23, 2013.

The landlord had claimed \$1,270 unpaid rent/loss of rent, parking and \$25 late fee for each of April 2013 and May 2013 for a total of \$2,680. The landlord later acknowledged an error in seeking a late fee for May (the loss of rent month), but the tenant later agreed to pay the landlord's filing fee, so topped up her payments with another \$25.

In any event, the tenant submitted into evidence copies of her cheques proving payment to the landlord.

The tenant also submitted into evidence a copy of her letter to AP of May 8, 2013, reiterating their agreement and including the statement that:

“You indicated that by making these payments and signing the move-out inspection form, the tenancy agreement is at an end and that you have possession of the unit. Further, that you will cancel the hearing scheduled with the Residential Tenancy Branch advising them that the matter has been resolved in full. Again, I understand this to mean that any and all disputes are resolved and the tenancy agreement ended in full.”

The guarantor attended the move-out condition inspection report with another party that day and, in addition to the other payments, surrendered the \$635 security deposit to cover damages. After the guarantor had signed the condition inspection report, the agent added another \$1,000 to the balance owed which the guarantor declined to initial.

The tenant wrote to AP on May 17, 2013 raising concern about the added claim and noting that the hearing had not been cancelled as promised.

On the evening before the hearing, the guarantor received an email from the landlord confirming that the hearing was cancelled, but reserving the right to make further application for damages.

At the time of the hearing, branch computer management system continued to show that the hearing was scheduled and not cancelled.

On examining the record, I find that the guarantor's conduct has been exemplary throughout this matter, despite a preoccupation with her son's illness.

I find that the guarantor has been absolutely truthful in reiterating the landlord's promise that payment of the outstanding rent, late fee, parking fees and filing fee and surrender of the security deposit would bring an end to the obligations of the tenant and the guarantor with respect to the tenancy.

I find that the tenant made full payment on the strength of that promise.

Therefore, I find that a future application for damage to the rental unit, as the landlord reserved the right to do in the 11th hour email to the tenant, is subject to the doctrine of estoppel.

I find the landlord is bound by the representation to the guarantor that full payment, as made, \$3,340 including the security deposit, is binding and constitutes full and final settlement of this tenancy.

Conclusion

The present application is dismissed without leave to reapply on the applicant landlord's failure to attend or cancel the hearing as promised.

The landlord is estopped from bringing any further action against the tenant and guarantor.

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: May 22, 2013

Residential Tenancy Branch

