



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekinow Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. This matter was originally conducted by way of direct request proceeding. I considered the evidence on the direct request application, including evidence from the tenant that the amount of rent owing in the notice to end tenancy was incorrect, and the landlord assured the tenant that she did not need to act on the notices to end tenancy. I determined that this matter was not appropriate for the direct request process, and I adjourned it to be reconvened as a teleconference hearing.

On July 8, 2013 the hearing reconvened by teleconference. Two agents for the landlord, the tenant, counsel for the tenant and two witnesses for the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on July 7, 2006. The tenant's rent is subsidized, under a subsidy agreement between the landlord and the tenant. On December 5, 2012 the landlord served the tenant a letter indicating that effective January 1, 2013, the tenant's rent

would be \$474, consisting of \$334 as the tenant's portion of the rent and \$140 for the tenant's daughter's portion of the rent under the subsidy and tenancy agreements. In January 2013, the tenant paid \$334 for her portion of the rent. The landlord subsequently served the tenant with a notice to end tenancy for unpaid rent in the amount of \$375. Each following month, the tenant paid her portion of the rent, and the landlord served the tenant with another notice to end tenancy for unpaid rent, increasing the outstanding unpaid rent by \$375 each month.

On May 6, 2013, the landlord served the tenant with a notice to end tenancy for unpaid rent in the amount of \$1,867.94. On May 16, 2013 the landlord applied for an order of possession and a monetary order pursuant to the notice to end tenancy. The tenant stated that she did not apply to dispute this notice because with each previous notice the landlord's agent had told the tenant that they did not intend to evict her, only to expedite the tenant's daughter's application for income assistance.

In the hearing the landlord stated that in late May, 2013 the landlord became aware that the tenant's daughter had moved out of the rental unit in April 2013. The tenant stated that she paid her portion of her rent for June 2013, and the landlord issued a receipt for the rent without indicating that the amount was accepted for use and occupancy only.

The tenant did not dispute the way in which the landlord calculated the rental subsidy.

Analysis

Based on the evidence, I find that the landlord reinstated the tenancy when they accepted rent from the tenant for June 2013 and did not indicate that they accepted the amount for use and occupancy only. Therefore, the landlord's application for an order of possession is dismissed.

As for the monetary order, I find that the landlord is entitled to \$1,867.94 in unpaid rent. The tenant did not dispute the landlord's calculation of the rental subsidy, and as the rent of the unit is related to the tenant's income, the landlord is exempt from sections 41 through 43 of the Act, regarding calculation of rent increases.

Conclusion

The landlord's application for an order of possession is dismissed.

I grant the landlord an order under section 67 for the balance due of \$1,867.94. 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: July 9, 2013

Residential Tenancy Branch

