



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cathay Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR, OLC, ERP, AS, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel the Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order to assign or sublet the rental unit because the landlords permission has been unreasonable withheld; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. During the hearing the tenant withdrew his application in all parts except to cancel the Notice to End Tenancy.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All

evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy set aside?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on June 18, 2013. Rent for this rental unit consisting of a room and common areas was \$600.00 per month due on the first day of each month. The tenant paid a security deposit of \$300.00 on June 18, 2013.

The landlord testifies that the tenant failed to pay rent for July, 2013 of \$600.00. A 10 Day Notice to End Tenancy was served upon the tenant by posting it to the tenant's door on July 05, 2013. The landlord has provided a proof of service document signed by a witness to show the service of the 10 Day Notice. The landlord testifies that the tenant was served with another Notice in person on July 18, 2013 when the tenant attended the landlord's office. A copy of the original Notice has been provided in evidence and has an effective date of July 15, 2013.

The landlord testifies that the tenant failed to pay the outstanding rent within the five days as indicated on the 10 Day Notice. The tenant could not be contacted as his phone was not working. However the tenant did contact the landlord's agent on July 16, 2013 and the landlord's agent arranged to meet with the tenant at the landlord's office on July 17, 2013. The landlord's agent testifies that when the tenant had called the landlord's agent the tenant had said that the landlord could rent the unit to someone else. When the tenant arrived at the landlord's office the landlord's agent gave the tenant some paper to provide written Notice to end the tenancy however the tenant did not do so.

The landlord's agent testifies that the tenant did not return his keys and the unit was re-rented to another tenant on August 01, 2013.

The landlord seeks to amend their application as they no longer seek rent for August. The landlord does seek to recover Julys rent and requests an Order to keep the security deposit to offset against this rent.

The tenant agrees that he has not paid rent for July, 2013. The tenant testifies that the house in which he lived was uninhabitable due to other tenants smoking narcotics. The tenant agrees that he received a 10 Day Notice in person on July 17, 2013 but disagrees that a Notice was posted to his door on July 05, 2013. The tenant testifies that he had informed the landlord that the landlord could rent the unit to someone else only if the landlord returned the tenants security deposit. As the landlord refused to do so the tenant testifies that landlord still went ahead and re-rented the unit and deactivated the tenant's key. The tenant testifies that the landlord has illegally evicted the tenant and has circumnavigated the legal procedures to evict a tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant agrees that he has not paid rent for July, 2013 therefore I find in favor of the landlords claim to recover the unpaid rent of **\$600.00**. I further find the landlord is entitled to keep the security deposit of **\$300.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the amount of **\$350.00** pursuant to s. 67 of the *Act*.

The tenant's application to cancel the 10 Day Notice to End Tenancy no longer has any merit as the tenant is no longer residing in the rental unit. The tenant's application is therefore dismissed. The tenant has testified concerning the landlord changing the locks and evicting the tenant illegally from his unit. As the tenant has not made an application concerning this matter then I find that in the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$350.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application to cancel the Notice to End Tenancy is dismissed.

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: August 09, 2013

Residential Tenancy Branch

