



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIGHTHOUSE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed they received personally both the Notice to end Tenancy dated July 15, 2013 and the Application for Dispute Resolution. I find that the tenant was served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated July 15, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on August 1, 2011, a security deposit of \$650 was paid and rent is \$1300 a month. It is undisputed that the tenant owed \$2770 in rental arrears to August 2013. However, the tenant made partial payments commencing on August 9, 2013 and has paid all outstanding rent including September 2013. It is undisputed that the landlord provided receipts "for use and occupancy only" as they did not want to reinstate the tenancy.

The tenant described unfortunate circumstances but said he now has a new stable contract and his wife has benefits so he anticipates no further problems with paying rent on time. He said they appreciated the landlord working with them through their difficulties. He would like to reinstate the tenancy. After further discussion, the parties agreed as follows:

Settlement Agreement:

- 1. The landlord will be issued an Order of Possession to be effective 10 days after service.**
- 2. The landlord agrees they will not enforce the Order of Possession provided the tenant pays his rent on time in October, November and December 2013.**

In evidence is the Notice to End Tenancy and the rental ledger. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find that the landlord is entitled to an Order of Possession. Although there is no outstanding rent, I find the tenant did not pay the amount outstanding within the time limits set out in the 10 day Notice and did not make application pursuant to Section 46 to set aside the Notice to End Tenancy and the time to do so has expired. When the landlord accepted rent subsequently, I find the tenancy was not reinstated as they limited acceptance "for use and occupancy only". In these situations, the Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. As agreed by the parties, an Order of Possession is issued effective 10 days from service and this will not be enforced provided the tenant pays rent on time in October, November and December 2013. No Monetary Order is required as the tenant has paid all rent to date.

Conclusion:

I find the landlord is entitled to an Order of Possession effective 10 days from service which will not be enforced provided rent is paid as promised. I find the landlord is entitled to recover filing fees paid for this application.

I HEREBY ORDER that the landlord may deduct \$50 from the security deposit to recover the filing fee for this application. This will leave \$600 remaining as 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: September 05, 2013

Residential Tenancy Branch

