



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR 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; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated September 2, 2013 posted on the door. The landlord gave sworn testimony that he served the Application for Dispute Resolution personally. I find that the tenant was properly 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 September 2, 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. The female tenant was in hospital and after a brief discussion her husband said they would put their phone on speaker. However, they did not speak on the line afterwards and after waiting five minutes without them responding in the conference, the landlord was given opportunity to be heard, to present evidence and to make submissions. The evidence is that the tenancy commenced on March 15, 2012, a security deposit of \$370 was paid on March 9, 2012 and rent is currently \$925 a month. The landlord said the tenants were \$1770 in arrears of rent. However, they paid all the rent owing yesterday.

Although they did not pay the rent in time to cancel the Notice according to section 46 of the Act, the landlord said that they have no desire to evict this very nice couple and would be prepared to settle the matter on the basis that the landlord obtain an Order of Possession for the end of November 2013 which the landlord will not enforce provided

the tenants pay their rent on time in October and November 2013. The tenants submitted no documents to dispute the landlord's evidence.

I left the conference call open until 9:45 a.m. but did not hear the tenant speak on the conference; I did hear an announcement of the tenant's spouse leaving the conference about 9:21 a.m. so the tenant may have been silently listening to the hearing.

In evidence is the Notice to End Tenancy, a lease and a copy of a receipt showing rent was accepted "for use and occupancy only". On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. The Tenant did not pay the outstanding rent within 5 days after service of the Notice and has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective November 30, 2013 as requested by the landlord. I find the landlord has agreed that this Order will not be enforced provided the tenant pays their rent on time in October and November 2013 and also pays the filing fee of \$50 for this application.

Conclusion:

I find the landlord is entitled to an Order of Possession effective November 30, 2013 and to recover filing fees paid for this application. I find the landlord has agreed not to enforce this Order of Possession provided the tenant pays their rent on time for October and November 2013 plus the \$50 filing fee.

I HEREBY ORDER that the tenant pay \$50 to the landlord for filing fee for this application before November 30, 2013.

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: October 02, 2013

Residential Tenancy Branch

