



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES 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:

The tenant did not attend. The landlord gave evidence that the Notice to end Tenancy dated September 8, 2013 was served personally and the Application for Dispute Resolution by registered mail. It was verified online that the Application/Notice of Hearing was successfully received. 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 8, 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:

The tenant did not attend although served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on August 1, 2013 for a fixed term expiring on July 31, 2014, a security deposit of \$412.50 was paid and rent is currently \$825 a month. The landlord claims \$800 in rental arrears for October 2013 plus \$25 late fee and \$25 for an NSF cheque. I

The landlord said the tenant had made a payment on September 24, 2013 and was given a receipt "for use and occupancy only" as it was too late to void the notice and they have had issues with NSF cheques from tenant.

In addition, the landlord is claiming \$412.50 in liquidated damages for breaking the lease. I explained to the landlord that if they are considering the lease at an end and imposing the liquidated damages clause set out in the lease addendum, they would be forgoing the right to claim rental loss to the end of the contract. The landlord said they prefer to claim the liquidated damages as this will help defray their costs of re-rental and they believe they might re-rent quickly because of the desirable location.

The landlord requests to retain the security deposit to offset the amount owing. The tenant submitted no documents in dispute and did not attend the hearing.

In evidence is the Notice to End Tenancy, a copy of the lease and the registration receipt. 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. There is outstanding rent. I find the rental payment made on September 24, 2013 was out of time to cancel the Notice served personally on September 8, 2013. The Tenant also 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 two days from service.

Monetary Order

I find that there are rental arrears in the amount of \$850 representing rental arrears to October 31, 2013 and fees of \$25 for a late fee and \$25 for NSF fee. The landlord may retain the security deposit to offset the amount owing. I find the landlord also entitled to \$412.50 in liquidated damages for the breach of the fixed term lease. I find this is a reasonable estimate of their expenses to re-rent and not a penalty, and is further justified by the landlord choosing to treat this fixed term lease at an end without claiming further rental loss.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent to Oct. 31 plus late and NSF fees	850.00
Liquidated damages per lease	412.50
Filing fee	50.00
Less security deposit	-412.50
Total Monetary Order to landlord	900.00

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 31, 2013

Residential Tenancy Branch

