Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEE HOI BROS CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing the landlord requested the monetary claim be amended to include loss of rent for the month of October 2013 since the tenant is still residing in the rental unit and authorization to retain the security deposit in partial satisfaction of unpaid rent. The tenant acknowledged that he is still residing in the rental unit and did not have any objection to the landlord's request for amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit and interest?

Background and Evidence

The tenancy commenced April 1, 2003 and the tenant paid a security deposit of $410.00 on March 6, 2003. The rent has increased incrementally over the years and currently the monthly rent is $1,035.00, payable on the 1st day of every month.

On July 3, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice has an effective date of July 16, 2013 and indicates rent of $1,096.75 was outstanding. The landlord explained that this amount is comprised of unpaid rent for July 2013 plus a balance owing from a previous month. The tenant did not pay the outstanding rent or file to dispute the Notice.

The tenant continues to occupy the rental unit and has not paid any monies for rent or use and occupancy.

In addition to an Order of Possession, the landlord requested a Monetary Order for unpaid and/or loss of rent up to and including the month of October 2013, less the security deposit. The tenant did not indicate any objections to the landlord's requests.

<u>Analysis</u>

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement or as increased pursuant to rent increase provisions of the Act. Where a tenant does not pay rent that is due the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on July 16, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for July 2013 and previous balance owing, as indicated on the 10 Day Notice. Since the tenant has continued to occupy the rental unit I find the landlord entitled to recover loss of rent for the months of August 2013 through October 2013. I also award the landlord the filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the rent owed the landlord. I calculate the accrued interest on the deposit to be $14.51.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: as per July 3, 2013 Notice	$ 1,096.75
Loss of Rent: August – October 2013	3,105.00
Filing fee	50.00
Less: security deposit and interest	(424.51)
Monetary Order	$ 3,827.24

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and interest in partial satisfaction of unpaid rent and has been provided a Monetary Order for the balance of $3,827.24 to serve and enforce.

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 15, 2013

_____
Residential Tenancy Branch