



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for Cause and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail at the rental unit on September 5, 2013. The landlord provided a registered mail tracking number as proof of service. The landlord testified that the tenant vacated the rental unit at the end of September 2013 but that a sub-tenant remains in the house.

Based upon the landlord's submissions, I accepted that the landlord sufficiently served the tenant with notice of this proceeding in a manner that complies with section 89 of the Act and I continued to hear from the landlord.

The landlord requested the application be amended to request authorization to retain the security deposit in satisfaction of the unpaid rent. I found the request non-prejudicial to the tenant and amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenant entered into a tenancy agreement to rent the subject property starting 2010. The tenant was required to pay rent of \$2,300.00 on the 1st day of every month for the entire house.

The landlord submitted that the tenant sublet portions of the house to other persons. In July 2013 the City determined that unpermitted alterations had been done to the house to create a "rooming house" type of structure and ordered the owner to rectify the unpermitted use in several ways including removal of partition walls and interior locks.

Upon receiving the letter from the City, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, in person, on July 20, 2013. The 1 Month Notice has a stated effective date of August 31, 2013. The tenant did not file an Application to dispute the 1 Month Notice.

The landlord testified that the tenant vacated the rental unit at the end of September 2013; however, one of the sub-tenants remains in possession of the house. Accordingly, the landlord seeks an Order of Possession in order to regain vacant possession of the house.

The landlord testified that the tenant withheld rent for August 2013. The landlord is seeking authorization to retain the tenant's security deposit in satisfaction of the unpaid rent.

Analysis

When a tenant receives a 1 Month Notice to End Tenancy for Cause, section 47 of the Act provides that the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not dispute the 1 Month Notice within 10 days then section 47 provides that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit.

Based upon the undisputed evidence provided to me, I am satisfied the tenancy ended August 31, 2013 pursuant to an undisputed 1 Month Notice to End Tenancy for Cause, as provided by section 47 of the Act. As such, the tenant was responsible for ensuring vacant possession of the entire house, being the rental unit, was returned to the landlord by that date.

Having heard a sub-tenant or occupant is still in possession of the rental unit I find the landlord entitled to an Order of Possession effective two (2) days after service, as requested.

I further order that the landlord may serve the Order of Possession by posting it on the door of the rental unit and/or giving the Order of Possession personally to the occupant

or sub-tenant residing in the house. If the Order of Possession is posted to the door of the rental unit it is deemed to be received three (3) days later.

Finally, I am satisfied the tenant owes the landlord rent for the month of August 2013 and I grant the landlord's request to retain the security deposit in satisfaction of the unpaid rent.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The Order of Possession may be served by posting it on the door or by giving it personally to the occupant and/or sub-tenant residing in the house.

The landlord has been authorized to retain the security deposit in satisfaction of the unpaid rent for August 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 17, 2013

Residential Tenancy Branch

