



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RADIO CITY INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession because the tenant has breached an agreement with the landlord. The landlord also applied for a Monetary Order for: money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the Act), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and, to recover the filing fee for the cost of the application from the tenant.

The landlord served the tenant personally with a copy of the application and Notice of Hearing documents with a witness and provided a signed proof of service document which contains the witness's and tenant's signature confirming the service and receipt of the hearing documents respectively. Based on this, I find the tenant was served with the hearing document as required by the Act.

An agent for the landlord attended the hearing to give affirmed testimony and also provided documentary evidence in advance of the hearing which was carefully considered in this decision. The tenant failed to appear for the hearing or provide any evidence prior to the hearing taking place despite being service notice of the hearing in accordance with the Act.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the written notice provided by the tenant to end the tenancy?
- Is the landlord entitled to money owed or compensation for damage or loss under the Act and tenancy agreement?
- Is the landlord entitled to the tenant's security deposit in partial or full satisfaction of the landlord's claim?

Background and Evidence

The landlord's agent testified that the tenancy began on June 1, 2012 for a fixed term of one year after which it continued on a month-to-month basis. A written tenancy agreement, provided as evidence for the hearing, was completed and signed by the landlord and tenant. The landlord collected a security deposit from the tenant in the amount of \$440.00 on May 27, 2012 which the landlord still retains. Rent in the amount of \$880.00 was payable by the tenant on the first day of each month which was increased through a rent increase to \$910.00 per month.

The landlord's agent testified that the tenant provided a written notice to the landlord on September 20, 2013. The written notice was provided as evidence and shows that the tenant was going to be ending the tenancy and leaving on October 31, 2013. As a result, the landlord made efforts to re-rent out the suite and engaged into a new tenancy agreement with a new tenant. The new written tenancy agreement was provided as evidence for this hearing and shows that the tenancy was due to start on November 1, 2013 for the monthly rent amount of \$910.00.

The landlord's agent testified that the building manager approached the tenant (named this application) on October 31, 2013 and spoke to the tenant who refused to leave. The landlord's agent testified that the tenant still resides in the rental suite and has not paid any rent for November, 2013 so that the landlord can accept it for use and occupancy only. As a result, the landlord seeks to obtain an Order of Possession and a Monetary Order for \$910.00 for unpaid rent as an over holding tenant and \$910.00 compensation he may be liable for to the new tenant.

When the landlord's agent was questioned about the current situation with the new tenant the landlord indicated that the new tenant is still patiently waiting to move in and is currently residing with a friend. The landlord's agent was unsure as to the costs he will be liable for to the new tenant as these details have not been discussed with the new tenant

Analysis

Section 45 (1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As a result, I find that in the absence of any testimony from the tenant to dispute this, the tenant served the landlord a written notice that ended the tenancy correctly in accordance with the Act on October 31, 2013. As the tenant has failed to move out of the rental suite accordingly, I find that the landlord is entitled to an Order of Possession. The landlord is also entitled to a monetary award in the amount of \$910.00 relating to the failure of the tenant to pay November, 2013 rent as an over holding tenant.

The landlord was not in a position to know of the costs that he may be liable for in relation to the new incoming tenant and as a result I dismiss this portion of the monetary claim with leave to re-apply.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72 (1) of the Act. Therefore, the total amount payable by the tenant is \$960.00. As the landlord already holds \$440.00 in a security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38 (4) (b) of the Act. As a result, the landlord is awarded \$520.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$520.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: November 17, 2013

Residential Tenancy Branch

