



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 396323 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing..

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on July 1, 2013. The rent is \$830.00 due in advance on the first day of each month. The tenant paid a security deposit of \$415.00 at the start of the tenancy. The tenant did not pay rent for October when it was due. On October 2, 2013 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. After he received the Notice to End Tenancy on October 16th the tenant paid the landlord the sum of \$800.00. the landlord gave the tenant a receipt for the payment marked: "for use and occupancy" There is \$30.00 still owing for October and as of the date of the hearing the tenants have paid no rent for November. The tenants did not file an application to dispute the Notice to End Tenancy.

At the hearing the tenant acknowledged that the rent is outstanding as stated by the landlord. He said that he is a new immigrant; his wife is working and he expects to have employment soo and wants to pay the rental arrears if the landlord will permit him to stay.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenants do neither of these two things, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. If the landlord chooses to give the tenants additional time to move based on their payment of rental arrears that is a matter within the landlord's discretion.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$860.00 for the outstanding rent for October and November. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$910.00. I order that the landlord retain the deposit and interest of \$415.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$495.00. This order may be filed in the Small Claims Court 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 19, 2013

Residential Tenancy Branch

