



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHAM AND DOAN HOLDINGS 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:

Both parties attended and the tenant agreed he received personally the Notice to end Tenancy dated October 31, 2013 and the Application for Dispute Resolution by registered mail. 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 October 31, 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:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. There was difficulty in this hearing as the tenant had an assistant who said the tenant had some problems with English; however, both the tenant and his girlfriend were prompting answers in the background in English. The tenant's girlfriend refused to be sworn in to give testimony as a witness yet she was clearly supplying answers and comments in the background. The tenant was denying that he owed any rent.

The undisputed evidence is that the tenant commenced living in the premises in June 2013, a security deposit of \$400 was paid and rent is \$800 a month. It is undisputed that the Ministry was paying the tenant's rent until September, then the tenant changed the arrangement to have the rent money given to him directly as he said he felt he could be responsible.

The landlord states that no rent was paid in October, November and December. He claims rental arrears of \$2400 and requests an Order of Possession to be effective as soon as possible. The tenant states he paid the landlord the rent for each of these months in cash but received no receipt. He said he did not request a receipt because he did not want to be subjected to abuse from the landlord. The landlord said they received no cash payments from the tenant and they always issue a receipt for cash on request. Another tenant testified that he is a friend of this tenant, he has lived in the building for two years and had no rental issues with the landlord; he confirmed that the landlord always issues receipts when requested for cash payments. He said he was aware that this tenant had decided to withdraw his arrangement with the Ministry but did not know what had happened after that.

In evidence is the Notice to End Tenancy, proof of service and some complaint letters from other tenants concerning this tenant's behaviour. On the basis of the documentary and 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. Although the landlord did not supply any rental records, I find his evidence more credible than the tenant's. Although the tenant claimed he paid the rent in cash, I find it unlikely that he would not have requested and received a receipt for any cash payments after he received a Notice to End his tenancy on October 31, 2013. I do not find his evidence credible that he never requested a receipt because he would be subjected to verbal abuse as another longer term tenant who is his friend said there was no problem getting receipts for cash payments on request. I find there is outstanding rent. I find the Tenant 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 \$2400 representing rental arrears from October to December 31, 2013.

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 arrears Oct. –Dec. 31, 2013	2400.00
Filing fee	50.00
Less security deposit (no interest 2013)	-400.00
Total Monetary Order to Landlord	2050.00

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: December 19, 2013

Residential Tenancy Branch

