



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding York Lake Equities 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 and a monetary order. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenants did not appear although they were personally served with the Application for Dispute Resolution and Notice of Hearing on January 17, 2014.

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 March 1, 2012. Initially the rent was \$1,050.00 per month, payable on the first of each month, but in April, 2013 it was increased to \$1,125.00 per month when water charges formerly paid by the tenants were included in the rent. The tenants paid a security deposit of \$525.00 on February 18, 2012. The tenants did not pay rent for January when it was due. They paid only \$100.00 on account of January's rent. On January 6, 2014 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenants have not paid rent for January or for February and they did not file an application to dispute the Notice to End Tenancy. The landlord testified that the tenants recently returned the keys to the rental unit, but they have not fully moved out and also left pets behind at the rental property. The landlord requested an order for possession. She said there is a great deal of cleanup to be done and it is unlikely that she will be able to re-rent the unit for several months.

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, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession – It appears that the tenants have not fully vacated the rental property and I find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,025.00 for the outstanding rent for January. I allow the landlord's claim for unpaid rent for half of February in the amount of \$562.50. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,637.50. I order that the landlord retain the deposit and interest of \$525.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,112.50. This order may be filed in the Small Claims Court and enforced as an order of that Court. The Landlord has leave to make a further application to claim for the costs of cleaning and repairs and for loss of revenue once those costs have been determined.

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: February 07, 2014

Residential Tenancy Branch

