



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Main Street Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with (a) 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; and (b) an application by the tenant for an order cancelling the landlord's Notice to End Tenancy dated December 18, 2013. The landlord also requested recovery of the filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on December 1, 2013. The rent is \$795.00 due in advance on the first day of each month. A security deposit of \$397.50 was paid at the start of the tenancy. On December 18, 2013 the tenant was served with a Notice to End Tenancy for non-payment of rent. The tenant filed an application to dispute the Notice.

The tenant disputed the Notice on the basis that he paid what he thought was the rent for December in the amount of \$730. The tenant testified that he thought this was the rent despite the fact that the tenancy agreement stipulated rent of \$795.00. In this regard, the landlord explained that if the tenant had arranged to pay the rent by automatic withdrawal, the rent would have dropped to \$729. The landlord explained that they offer this rent reduction as an incentive for paying by automatic withdrawal. However, both parties testified that the documents for automatic withdrawal were never submitted by the tenant.

The landlord testified that he asked the tenant on several occasions to submit the documentation required but that the tenant chose not to. As a result, on December 18th the landlord served the tenant with the 10 Day Notice.

The tenant also testified that he was not happy with certain aspects of the rental unit and that on that basis he decided not to pay any rent for the months of January and February.

Analysis

Cancellation of Notice/Order of Possession - Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant 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. In the present case, the tenant did dispute the Notice but the landlord was able to show at the hearing that the rent had not been paid in full for December and that no rent had been paid for January and February. As a result, the tenant's request for an order cancelling the Notice to End Tenancy is dismissed and the landlord's request for an order of possession is granted.

Monetary Order – The landlord has claimed unpaid rent in the total amount of \$1,656.00. The tenant has not disputed that this is the amount of rent owing. The Act and the tenancy agreement require that the tenant pay the rent when it is due. I am therefore satisfied that the landlord has established this claim.

Filing fee – Based on the outcome of this hearing, I find that the landlord is entitled to recover the \$50 filing fee for this application from the tenant.

Conclusion

I find that the landlord is entitled to an order for 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.

I find that the landlord has established a total monetary claim of \$1,706.00 comprised of \$1,656.00 in unpaid rent and the \$50.00 fee paid by the landlord for this application. I therefore order that the landlord retain the deposit of \$397.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1308.50. 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: February 11, 2014

Residential Tenancy Branch

