



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Diversified Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent; for damage to the unit, site, or property; and to recover the RTB filing fee. During the hearing, the landlord withdrew his claim for damage to the unit, site, or property.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to an order for unpaid rent?

Background and Evidence

A tenancy agreement was signed by the parties on May 5, 2013. The tenancy agreement indicates the tenant was obligated to pay \$1,500.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$750.00. The tenancy agreement was for a fixed term of one year.

The landlord gave evidence that he served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") by registered mail on January 21, 2014. The Notice states that the tenant failed to pay rent of \$1,500.00 that was due on January 1, 2014.

The tenant gave evidence that he has not used the rental property since the end of November 2013 when the furnace stopped working. The tenant gave evidence that he considers the tenancy to be at an end. The tenant did not advise the landlord, until the hearing, that he considers the tenancy to be at an end.

The parties agree that the tenant has not made any rental payments for the months of January, February, or March 2014. The landlord seeks a monetary order for \$6,000.00 for unpaid rent for the months of January, February, and March 2014 (totalling \$4,500.00) and for breach of the fixed term agreement (an amount equivalent to April 2014 rent of \$1,500.00).

The tenant states the rental property did not have a proper heating system and the landlord did not address the problem adequately when notified of this. It is the tenant's position that no rent is owing because the rental unit lacks a primary source of heat.

The landlord provided a copy of a series of emails between the parties dated December 2013, January 2014, and February 2014, in which the parties discuss what arrangements will be made to replace the furnace as a heating system for the rental property. On December 19, 2013, the landlord advised they intended to install electric baseboard heaters. The landlord's evidence at the hearing was that the landlord subsequently discovered that the rental property electrical system could not support baseboard heaters. The landlord had a woodstove installed by January 17, 2014. It is the landlord's evidence that the landlord had difficulty getting the work done sooner because of the location of the property and the holiday season.

In an email to the tenant dated January 14, 2014, the landlord advises, among other things, that the tenant is not entitled to withhold rent. The landlord proposes a rent reduction to \$1,000.00 for the time the tenant was inconvenienced. At the hearing, the landlord's evidence was that the parties did not agree on a rent reduction.

In an email dated January 17, 2014, the tenant indicates his view that a woodstove is not an adequate source of heat for the rental property. Among other things, he proposes a rent refund for the month of December 2013 and a mutual agreement to end tenancy immediately. No response from the landlord is in evidence.

The landlord's evidence at the hearing is that a woodstove is an adequate source of heat for the rental unit.

Analysis

The tenant gave evidence that he considers the tenancy to be at an end, and the landlord requests an order of possession. I find the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the

tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Where a tenant considers that the rental unit lacks a primary heating system, the tenant has two options. First, the tenant may apply to the RTB for an order that the landlord make emergency repairs. Second, the tenant may follow the process set out in Section 33(3) to make the emergency repairs himself and then seek reimbursement from the landlord. The Act does not provide an option for the tenant to withhold rent.

A tenant who considers that the landlord is in breach of a material term of the tenancy agreement has the option of giving the landlord notice to end the tenancy, pursuant to Section 45(3) of the Act. I find that the tenant did not give the landlord notice that he wished to end the tenancy. He did not advise the landlord that he considered the tenancy to be at an end until the hearing on March 19, 2014.

A tenant who considers that a landlord has breached Section 27 by terminating a service or facility has the option of applying to the RTB for a rent reduction for the period of time that the service or facility was unavailable. The tenant has not filed such an application.

I find the tenant has failed to pay rent for January, February, and March 2014 and has not provided a justification for not paying rent that is in accordance with the Act. The landlord is therefore entitled to an order for \$4,500.00 in total unpaid rent for those three months.

The landlord also seeks an order for \$1,500.00 rent for the month of April 2014 on the basis that the tenant has breached the tenancy agreement by ending the tenancy prior to the end of the fixed term. I find that the landlord was not aware until March 19, 2014 that the tenant considered the tenancy to be at an end. At that point, the landlord did not have sufficient time to inspect the property and then seek a new tenant for the month of April 2014. I find the landlord has proven a loss of \$1,500.00 rent for the month of April 2014 caused by the tenant's breach of the fixed term agreement and failure to give sufficient notice to allow the landlord an opportunity to mitigate his losses.

The total amount due the landlord is \$6,000.00. I order that the landlord retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,250.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order of \$5,250.00. The landlord is also entitled to retain the security deposit.

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: April 04, 2014

Residential Tenancy Branch

