



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence. The tenant did not attend the hearing. The landlord gave evidence that he served the tenant with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on February 20, 2014.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord provided a copy of the tenancy agreement which indicates the tenancy started December 31, 2013 and the tenant was obligated to pay rent of \$870.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$435.00.

The landlord gave evidence that he served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenant's door on February 2, 2014. Section 90 specifies that a Notice served in this manner is deemed to have been received by the tenant three days later, on February 5, 2014.

The Notice specifies that the tenant failed to pay rent of \$3,555.00 that was due February 1, 2014. The Notice has an effective date of February 15, 2014. It is the landlord's evidence that the \$3,555.00 amount is comprised of unpaid rent for

November and December 2013 and January and February 2014 as well as three late fees of \$25.00 each.

The landlord gave evidence that the tenant has made no payments since the Notice was served and has not vacated the rental unit.

Analysis

I find the tenant received the Notice on February 5, 2014. I find the Notice specified the incorrect amount of unpaid rent that was owing on the date the Notice was served, because the amount included late fees as well as unpaid rent. According to the landlord's evidence, the amount of unpaid rent owing on February 2, 2014 was \$3,480.00 (four months' rent). It is likely the tenant was aware that he owed four months' rent. For that reason, I find it is appropriate to amend the Notice to specify an unpaid rent amount of \$3,480.00 at February 2, 2014.

I accept the landlord's evidence that the tenant has made no further payments. According to Section 46(5), if a tenant does not pay the rent or make application for dispute resolution within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend his Application for Dispute Resolution to include a claim for March 2014 rent and half of April 2014 rent. The landlord is entitled to recover five and one-half months' rent, which totals \$4,785.00. The landlord is also entitled to recover his RTB filing fee of \$50.00.

The total amount due the landlord is \$4,835.00. I order that the landlord retain the security deposit of \$435.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4,400.00. 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 for \$4,400.00.

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: April 10, 2014

Residential Tenancy Branch

