



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLIFFORD ENTERPRISES (CANADA) LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

The tenant has applied for an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities).

The landlord has applied for an Order of Possession, a Monetary Order, and an order to retain the security deposit. This claim was initially scheduled to be heard March 31, 2014, but was adjourned so as to be heard in conjunction with the tenant's claim.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began on January 15, 1997. Rent is due on the 1st day of each month in the amount of \$751.80. A security deposit of \$350.00 was paid on January 15, 1997.

The tenant provided a cheque to the landlord for February's rent, dated February 14, 2014, but used the money in his account to pay for furniture, as he had thrown out his existing furniture because of a bed bug problem in the premises. The landlord attempted to cash the cheque, which failed to clear as a result of insufficient funds. No rent was paid on March 1, 2014, and the landlord issued the 10 day notice on March 3, 2014. At that time the tenant owed rent for both February and March. The tenant paid \$800.00 cash to the landlord on March 8, and the balance of the rent due for March on March 28. The landlord accepted the cash, but not on the basis that the tenancy had been reinstated. The tenant provided the landlord with a cheque of the April rent, post-dated to April 11, 2014. The landlord returned that cheque to the tenant.

Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay his rent on the first day of each month, whether or not there was a bed bug infestation in the premises and whether or not he needed to buy new furniture. It was not a legal option for the tenant simply to refuse or delay in the payment of rent. The landlord was therefore entitled in law to serve the notice ending this tenancy. The Residential Tenancy Act does not provide me with authority to grant an extension of time to the tenant to pay rent. Upon receipt of the Notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the Notice is dismissed.

The landlord seeks an Order of Possession effective April 30, 2014, and that order is found appropriate and is made. The landlord is entitled to recover rent for April, and claims the sum of \$751.80 in his application. That sum is awarded, together with recovery of the landlord's \$50.00 filing fee. The landlord is also entitled to retain the security deposit in partial satisfaction of the award.

Conclusion

The tenant's claim to have the Notice cancelled is dismissed.

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective April 30, 2014. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$801.80, representing the rental arrears and the recovery of the filing fee. The security deposit including accrued interest to the date of this hearing, totals \$396.07. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$405.73, be paid immediately by the tenant.

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 11, 2014

Residential Tenancy Branch

