



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUN LIFE ASSURANCE COMPNAY OF CANADA
GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

The tenant has applied for an order to cancel a notice to end the tenancy for unpaid rent. The landlord requests an Order of Possession and a Monetary Order.

The tenant failed to attend the hearing. The landlord advised that she had received an email from the tenant on the morning of the hearing, requesting a delay in the hearing, because it was inconvenient for the tenant to attend. The landlord was opposed to any adjournment.

I declined to adjourn the hearing for several reasons. Firstly, I accept that the tenant was properly served by the landlord with the relevant notice ending the tenancy, the notice of this hearing, and the evidence from the landlord. I also note the tenant was well aware of the hearing for the past month, having filed her own application on March 10, 2014. Despite this awareness over a full month, there was no indication from the tenant until the morning of the hearing that there would be any problem with the date for the hearing. I draw an adverse inference from the failure of the tenant to request an adjournment until the last minute.

Secondly, the tenant could have phoned in to the hearing to explain to me why she could not proceed at this time, but did not do so, and did not arrange for a friend or an agent to do so on her behalf. I am provided with an insufficient explanation in her email to support any adjournment.

Thirdly, I accept the landlord's testimony that the two cheques provided to date by the tenant both went NSF, because the account had been closed. There have been no moneys received by the landlord at all to this point, yet the tenant remains in possession of the renal unit. It would be prejudicial and unfair to the landlord under these conditions to permit a delay, as the landlord has already suffered a loss and there is a likelihood that any such delay would serve to increase the amount of such loss.

Finally, in the absence of an agreement between the parties, I have no authority under the Residential Tenancy Act to order an extension of time to the tenant to pay her rental arrears, which appears to be the solution sought by the tenant.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there money due and payable by the tenant to the landlord?

Background and Evidence

This tenancy began February 14, 2014. Rent is due in advance on the first day of the month, in the amount of \$940.00. Cheques to pay the security deposit of \$470.00 and the pro-rated rent for February of \$402.85 were given by the tenant to the landlord, and both failed to clear, because the account from which the funds were to be drawn had been closed. On March 3, 2014, the landlord posted a 10 day Notice to End Tenancy, for unpaid rent. On March 10, 2014, the tenant filed a dispute of this notice. No further money has been paid by the tenant to the landlord. The tenancy agreement requires that the tenant pay NSF fees and late charges of \$25.00 per incident. The tenant remains in possession of the premises.

Analysis

When the tenant's cheques bounced, the landlord was entitled in law to serve the 10 day notice ending this tenancy, for non-payment of rent. Upon receipt of that 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, and provides no reason as to why she was not obliged to pay that rent. The tenant's failure to attend the hearing and give any testimony to support her claim to cancel the notice, results in the dismissal of the tenant's claim. The 10 day notice is therefore found effective to end this tenancy, and the landlord has established a right to possession.

I accept that the tenant is liable for late charges and NSF fees, and for the unpaid rent to the date of the hearing. I further accept the landlord's testimony that in all probability she will be unable to place a new tenant until at least the end of April, and that the landlord will suffer a loss of rent for the full month of April. The sums awarded to the landlord are:

Pro-rated rent for February	\$402.85
Loss of rent for March	\$940.00
Loss of rent and rental income for April	\$940.00
NSF fee re: Security deposit	\$ 25.00
NSF re: February rent	\$ 25.00

Late fee for February rent	\$ 25.00
Late fee for March rent	\$ 25.00
Recovery of the landlord's filing fee	\$ 50.00

This results in a total sum of \$2,432.85 owed by the tenant to the landlord.

Conclusion

The tenant's request for an adjournment and her claim to cancel the notice are both dismissed.

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The tenant must pay the sum of \$2,432.85 to the landlord.

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

