



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, OPR, MNR

Introduction

This hearing dealt with applications from both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for cause. The landlord applied for an order of possession, based on a notice to end tenancy for unpaid rent, and a monetary order for unpaid rent.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The tenant was represented by an advocate.

Issue(s) to be Decided

Is the landlord entitled to an order of possession, based on the notice to end tenancy for unpaid rent?

If not, should the notice to end tenancy for cause be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy agreement signed by the parties on December 1, 2012 indicates the tenancy started on December 1, 2012 and the tenant is obligated to pay \$750.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$250.00.

The tenant gave evidence that she also paid a pet deposit of \$200.00. The landlord's evidence is that the tenant paid a pet deposit but requested its return in April 2013 and the pet deposit was returned to her. The tenant denies that she received her pet deposit back.

The landlord gave evidence that the tenant was served with a Notice the End Tenancy for Unpaid Rent (the "Notice") on March 5, 2014 by posting the Notice on the tenant's door. Section 90 provides that a notice served in this manner is deemed to be received by the tenant three days later, on March 8, 2014.

The Notice states the tenant failed to pay rent of \$750.00 that was due March 1, 2014. The Notice specifies an effective date of March 15, 2014.

The parties agree that the tenant's March 2014 rent was paid on March 27, 2014 by the tenant's sister. The landlord issued a receipt marked "occupancy use only – not reinstating tenancy".

The tenant's evidence is that she was confused about the amount of rent she had to pay, because she previously only had to pay \$688.00. Also, the tenant's sister normally deals with the tenant's rent however the tenant's sister was away.

The landlord gave evidence that the rental building had a promotion when the tenant started her tenancy, whereby tenants received the equivalent of one month's rent in the form of 12 monthly discounts over the period of a one-year lease. This resulted in the tenant paying \$688.00 for her first year. However, the tenant was advised by letter dated September 30, 2013 that her lease was coming to an end and the rental amount would go back to the \$750.00 amount specified in the tenancy agreement effective December 1, 2013.

The parties agree the tenant paid \$750.00 rent in December 2013, January 2014, and February 2014.

The landlord's evidence is that the tenant has paid rent for April and May 2014.

Analysis

I find the tenant received the Notice on March 8, 2014. 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. I accept the evidence of the parties that the tenant's rent was not paid until March 27, 2014. I find the tenant did not pay the rent or apply for dispute resolution within the five day period. For that reason, 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 tenant. Should

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

Section 63 of the Act provides that the parties may settle part or all of their dispute in the hearing, and the director may record the settlement in the form of a decision or an order. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

1. The tenant must vacate the rental unit by June 30, 2014.

In keeping with the parties' agreement, the order of possession will be effective June 30, 2014 at 1 p.m.

Since the Notice is effective in ending the tenancy, I do not need to deal with the tenant's application to cancel the notice to end tenancy for cause. For that reason, the tenant's application is dismissed.

I accept the landlord's evidence that the tenant's rent is currently paid in full. The landlord therefore withdraws her application for a monetary order.

Conclusion

I grant the landlord an order of possession. The tenant's application is dismissed.

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: May 14, 2014

Residential Tenancy Branch

