



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified and submitted evidence that the Tenant had been served by sending the Notice of Hearing and Application documents by registered mail on March 28, 2014, to the forwarding address provided by the Tenant at the end of the tenancy. Under the Act, the Tenant was deemed served five days after mailing. I find the Tenant has been duly served. I note that refusal or neglect to accept registered mail is not a ground for review under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Agent testified that the Tenant vacated the rental unit on or about March 16, 2014. Therefore, an order of possession for the rental unit is no longer required, and this portion of the Landlord's claim is dismissed.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

This tenancy began on January 1, 2014, with the parties entering into a written Tenancy Agreement. The monthly rent was \$800.00 and the Tenant paid a security deposit of \$400.00.

The Agent for the Landlord testified that the Tenant paid the deposit and the first month of rent by cheque; however, the cheques were not honoured by the Tenant's bank due to insufficient funds. The Agent testified that the Tenant did make some subsequent payments, although by March a significant balance of rent payable was due to the Landlord. One of the payments made was attributed to the security deposit owed by the Tenant.

The evidence and affirmed testimony of the Agent for the Landlord is that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on March 3, 2014, by posting it to the rental unit door (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice by filing an Application for Dispute Resolution.

The Agent for the Landlord testified that the Tenant did not file an Application to dispute the Notice and did not pay the rent.

The Agent for the Landlord testified that the Tenant agreed to end the tenancy and vacate the rental unit.

At the time of the outgoing condition inspection report the Tenant agreed in writing that he owed the Landlord \$1,810.00 in unpaid rent and \$77.28 for carpet cleaning, and that the Landlord could retain the security deposit paid in partial satisfaction of the amount owed.

Subsequent to this the Landlord reduced the amount of rent, late payments and NSF fees down to \$1,422.96 and at the hearing the total amount claimed was lowered to \$1,500.24, from the original amount sought of \$1,840.00

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The Tenant vacated the rental unit on or about March 16, 2014.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of **\$1,550.24** comprised of rent, late fees and NSF charges and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,150.24**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant vacated the rental unit prior to the hearing.

The Landlord is awarded the rent and carpet cleaning amounts claimed which are less than the amounts agreed to by the Tenant and may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 17, 2014

Residential Tenancy Branch

