



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLEASANTVALE HOMES SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit, and to recover the filing fee. The Landlord also applied for ‘Other’ issues which were documented in the details section of the Application as a request for an Order of Possession based on a breach of a mutual agreement to end the tenancy.

Preliminary Issues and Findings

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance by the Tenant during the 30 minute duration of the hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the service of the Notice of Hearing documents by the Landlord to the Tenant.

The Landlord’s agent testified that she served the Tenant with a copy of the Application and Notice of Hearing documents by registered mail to the rental unit address on May 29, 2014. The Landlord’s agent provided the Canada Post tracking number during the hearing.

Section 90(a) of the Act explains that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by a failure or neglect to pick up mail or use this reason alone for making a review application. As a result, I accept the Landlord’s agent’s evidence and find that, pursuant to Section 90(a) of the Act, the Tenant was deemed to have received the required documents for this hearing on June 3, 2014. As a result, I proceed to hear the undisputed evidence of the Landlord as follows.

The Landlord explained at the start of the hearing that since making this Application, the Tenant has failed to pay rent for June and July, 2014. As a result, pursuant to Section 64(3) (c) of the Act, I allowed the Landlord's agent to amend the monetary claim amount for unpaid rent on the Application to include unpaid rent for these two months and I considered the Landlord's resulting monetary claim accordingly.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on a breach of a mutual agreement to end the tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of Landlord's monetary claim?

Background and Evidence

The Landlord's agent testified that this tenancy started on November 1, 2012 on a month to month basis. The rent payable at the start of the tenancy was in the amount of \$465.00 on the first day of each month and currently the rent amount payable is \$472.65. The Tenant paid a \$212.50 security deposit at the start of the tenancy which the Landlord still retains. I note that there is no interest payable on the security deposit.

The Landlord's agent testified that the Tenant habitually paid rent late throughout the tenancy and explained that she tried to work with the Tenant so that his payments could be made. The Landlord's agent testified that by the end of January, 2014, the Tenant was in a total rent arrears of \$2,494.30 but continued to work with the Tenant and the revenue agency so that the Tenant could make the payment for the rental arrears.

However, the Tenant continued to fail to pay rent for February and March, 2014. On March 18, 2014 the Landlord's agent and the Tenant engaged in a discussion and both parties decided that it was best for the tenancy to end. The Landlord and Tenant both signed a Mutual Agreement to End a Tenancy (the "Mutual Agreement") document which stated that the tenancy would end on April 30, 2014 at 1:00 pm. A copy of this was provided in written evidence.

The Landlord's agent testified that the Tenant failed to pay rent for April, 2014 and also failed to move out of the rental suite in accordance with the Mutual Agreement. In

addition, the Tenant still resides at the rental suite and has not paid rent for May, June and July, 2014.

The Landlord testified that the Tenant is in total rent arrears of \$5,330.20 (\$2,494.30 up until January, 2014 and 6 months (February – July, 2014) at \$472.56 per month). The Landlord provided in written evidence a 'Rent History Sheet' document which shows the payments and lack of payments made by the Tenant since the start of the tenancy to May, 2014.

As a result, the Landlord seeks an Order of Possession based on the fact that the Tenant has failed to vacate the rental suite in accordance with the Mutual Agreement and a Monetary Order for the unpaid rent in the amount of \$5,330.20

Analysis

Section 44(1) (c) of the Act provides that a Landlord and Tenant can agree in writing to end the tenancy.

Based on the Landlord's undisputed affirmed testimony and the Mutual Agreement between the Landlord and Tenant, provided in written evidence, I am satisfied that an agreement was reached by the parties on March 18, 2014 to end the tenancy on April 30, 2014.

I accept the Landlord's agent's testimony that the Tenant has failed to move out of the rental suite in accordance with the Mutual Agreement and find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) (d) of the Act.

As the effective date of the Mutual Agreement has passed and no rent has been paid by the Tenant in the interim time period that would have re-instated the tenancy, the Order of Possession is effective two days after service on the Tenant.

In relation to the Landlord's claim for unpaid rent, I also accept the undisputed testimony of the Landlord's agent as well as the rent history document detailing the Tenant's payment history and find that the Tenant owes the Landlord **\$5,330.20** in rental arrears.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of his Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$5,380.20**.

As the Landlord already holds the Tenant's **\$212.50** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act.

As a result, the Landlord is awarded a total amount of **\$5,167.70**.

Conclusion

For the above reasons, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$5,167.70**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 17, 2014

Residential Tenancy Branch

