



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coronet Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began in 2009, although a new tenancy agreement was created in February, 2014. The rent is \$645.78 due in advance on the first day of each month. The tenant paid a security deposit of \$282.50 in June, 2009. On April 2, 2014 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. After he received the Notice to End Tenancy the tenant has made some rent payments, all of which have been accepted: "for use and occupancy only". The landlord and the tenant agree that as of the date of the hearing there are rental arrears due to the landlord in the amount of \$1,987.34. The tenant agreed that this was the correct amount that he owes, taking into account his most recent payment to the landlord.

At the hearing the tenant requested some time to pay the rental arrears and requested that the landlord allow the tenancy to continue. The landlord's representative said that he is prepared to give the tenant two weeks to pay the full amount of arrears and he requested an order for possession effective August 22, 2014 to be enforced in the event that the tenant fails to pay the arrears in full by then

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant

does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, and evidence, including the agreement of the landlord to give the tenant some time to pay the arrears, I find that the landlord is entitled to an order of possession effective August 22, 2014, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$1,987.34 for the outstanding rent, including rent for August. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2937.34. I order that the landlord retain the deposit and interest of \$282.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,754.84. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord claimed payment of an “arbitration filing fee” of \$80.00. This claim is denied. The only costs recoverable are actual filing fees paid to the Residential Tenancy Branch and the only non-refundable fees that a landlord is permitted to charge are set out in section 7 of the Residential Tenancy Regulation; an “arbitration filing” charge is not a permitted fee that may be claimed and it does not constitute “liquidated damages” as asserted by the landlord’s representative.

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: August 08, 2014

Residential Tenancy Branch

