



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTRAL ISLAND INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause and authorization to retain all or part of the tenant's security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing package was sent to the tenant at the rental unit via registered mail on July 31, 2014 and that the registered mail was returned as unclaimed. The landlord orally provided a registered mail tracking number as proof of service.

Section 90 of the act deems a party to have received documents five days after mailing even if the person refuses to accept or pick up their registered mail so that a party cannot avoid service.

In this case, I was satisfied that the landlord served the tenant with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord authorized to retain any or all of the security deposit?

Background and Evidence

The tenancy commenced April 1, 2012 and the tenant paid a security deposit of \$275.00. The tenant is required to pay rent on the 1st day of every month. On June 24, 2014 the resident manager posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The Notice has a stated effective date of July 27, 2014. The tenant did not file to dispute the Notice. The tenant continues to occupy the rental unit. On July 28, 2014 the landlord filed this Application. The landlord received a rent cheque for the months of August and September 2014 which the landlord accepted for

“use and occupancy only” as indicated on receipts left in the tenant’s mailbox. The landlord also received a rent cheque for October 2014 but has not cashed the cheque pending the outcome of this hearing.

The landlord requested an Order of Possession effective as soon as possible.

With respect to the security deposit, the landlord requested that the landlord be authorized to retain it as the landlord anticipates cleaning and repairs will be necessary.

Analysis

A landlord may end a tenancy by serving the tenant with a 1 Month Notice to End Tenancy for Cause. A tenant who receives a 1 Month Notice has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file an Application to dispute the Notice then, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and must vacate the rental unit by that date.

In this case, I accept the evidence before me that the landlord posted a 1 Month Notice to End Tenancy on the tenant’s door on June 24, 2014. The effective date should have read July 31, 2014 to comply with the requirement of the Act and automatically changes to that date pursuant to section 53.

Since the tenant did not file an Application to dispute the 1 Month Notice, I find the tenancy ended on July 31, 2014 and the landlord is entitled to regain possession of the unit. Therefore, I grant the landlord’s request for an Order of Possession and I provide one to the landlord with this decision that is effective two (2) days after service upon the tenant.

I further award the landlord recovery of the filing fee paid for this Application and I authorize the landlord to deduct \$50.00 from the security deposit in satisfaction of this award.

I find the landlord request to retain the security deposit for cleaning and damage is premature as losses are only anticipated at this point in time. Therefore, I dismiss the landlord’s claim against the balance of the security deposit with leave to reapply.

Conclusion

The landlord has been provided an Order of Possession that is effective two (2) days after service upon the tenant.

The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this Application. The remainder of the landlord's claim against the security deposit is dismissed with leave to reapply.

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: October 01, 2014

Residential Tenancy Branch

