



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 representatives called in and participated in the hearing. The tenants did not appear although they were each served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 11, 2014.

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 on February 1, 2001 for a six month term and thereafter month to month. The initial monthly rent was \$750.00 and the tenants paid a security deposit of \$375.00 on January 25, 2001. The applicant acquired the property from the original owner approximately three years ago subject to the existing tenancies and this tenancy has continued. The rent has been increased in accordance with the *Residential Tenancy Act* and the current rent is \$939.00. This rent took effect on May 1, 2014, however the tenants have neglected or refused to pay the increased rent and when they have made payments they have continued to pay rent in the former amount of \$919.00. The tenants did not pay rent for June when it was due. On June 5, 2014 the landlord personally served the tenants with a Notice to End Tenancy for non-payment of rent by handing a copy of the Notice to End Tenancy to one of the tenants at the rental unit. On June 9, 2014 the tenants paid the landlord the sum of \$919.00. The landlord gave the tenant receipt for the payment and it was noted on the receipt that the payment was accepted for "use & occupation only". Since June the tenants have continued to make payments of rent in the amount of \$919.00, including a payment for September in the

said amount. Each of the payments has been accepted by the landlord and noted to be “for use and occupancy only and not to reinstate the tenancy for the rental unit. The tenants did not file an application to dispute the Notice to End Tenancy.

The landlord has claimed amounts for late fees charged to the tenants, but the tenancy agreement made between the tenants and the former landlord does not contain a term entitling the landlord to charge late fees.

The landlord’s representative testified that the landlord has been charged bank service fees of \$8.00 for each NSF cheque issued by the tenants in payment of rent. According to the ledger supplied by the landlord it received three NSF cheques from the tenants.

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. The tenants failed to pay the full amount of the outstanding rent in the amount of \$939.00 within five days and they did not apply to dispute the Notice to End Tenancy. The tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenants’ partial rent payments since June have all been accepted “for use and occupancy only”.

Conclusion

Order of Possession – The landlord has accepted a partial rent payment for September, “for use and occupancy”. Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective September 30, 2014, after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit –

The Residential Tenancy Regulation provides that a landlord may charge an administration fee for return of a tenant’s cheque by a financial institution or for late payment of rent. The charge may not exceed \$25.00 and the landlord must not charge the fee unless the tenancy agreement provides for that fee. Because the tenancy agreement does not authorized charges for late payment or an administration charge for NSF cheques, the landlord’s claims for these charges are denied. The landlord is

entitled to recover the service charges that it has been required to pay to the bank for the tenant's NSF cheques and I allow the claim for service charges in the amount of \$24.00.

I find that the landlord has established a total monetary claim of \$146.00 for the outstanding rental arrears for February and March. The landlord is entitled to recover bank charges of \$24.00 and the \$50.00 filing fee for this application for a total award of \$220.00. I order that the landlord retain the sum of \$220.00 from the security deposit and interest that it holds (Interest of \$24.15 has accrued on the original deposit amount of \$375.00 in the amount of \$399.15. The remainder of the deposit shall be dealt with in accordance with the *Residential Tenancy Act* at the end of the tenancy. The landlord has leave to apply for a further monetary award for damages or loss of revenue if additional losses are incurred.

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: September 09, 2014

Residential Tenancy Branch

