



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARDEN CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, CNR, MT, MNR, LRE, AS, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and for the filing fee. The landlord also applied to keep the security deposit in partial satisfaction of the claim.

The tenants applied for an order to cancel the notice to end tenancy and for more time to do so. The tenants also applied for an order directing the landlord to carry out repairs, to allow the tenants to sublet and set conditions on the landlord's right to enter the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and the filing fee? Are the tenants entitled to the remedies that they have applied for?

Background and Evidence

The tenancy started on June 01, 2014. A tenancy agreement was not filed into evidence. Both parties agreed that the monthly rent was set at \$900.00.00 per month and due on the first of each month. The tenants also agreed that they were required to pay a late fee of \$25.00, if rent was paid after the due date. Prior to moving in the tenants paid a security deposit of \$450.00.

The landlord testified that on August 05, 2014 the landlord served the tenant with a ten day notice to end tenancy for rent owed. The tenants disputed the notice but did not pay rent and continue to occupy the rental unit. At the time of the hearing the tenants agreed that they owed the landlord \$2,600.00 for unpaid and \$75.00 in late fees.

Analysis

The tenants received the notice to end tenancy for unpaid rent, on August 05, 2014 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenants. The order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$2,600.00 for unpaid rent and \$75.00 for late fees. Since the landlord has proven her case she is also entitled to the recovery of the filing fee of \$50.00. Overall the landlord has established a claim of \$2,725.00. . I order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,275.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is coming to an end the tenants' application for an order directing the landlord to carry out repairs, to allow the tenants to sublet and to have conditions set on the landlord's right to enter the rental unit is moot and accordingly dismissed.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$2,275.00**.

The tenant's application is dismissed in its entirety.

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 17, 2014

Residential Tenancy Branch

