



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodsmere Holdings Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order ending the tenancy earlier than a notice to end tenancy would take effect, for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and hearing documentation by registered mail on September 30, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and has provided a copy of the Canada Post receipt bearing that date and a tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Should the landlord obtain an order ending the tenancy earlier than a notice to end tenancy would take effect?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 13, 2014 for a six month term, and then reverted to a month-to-month tenancy, and the tenant has vacated the rental unit. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant failed to pay rent when it was due for September, 2014 and the landlord's agent posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided and it is dated September 9, 2014 and contains an expected date of vacancy of September 19, 2014 for \$1,100.00 plus an N.S.F. fee of \$50.00 that was due on September 1, 2014. Both pages of the 2 page form have been provided. The landlord's agent testified that the tenant paid rent for November with a cheque which was returned for insufficient funds on September 5, 2014. She stated that the tenancy agreement provides for an N.S.F. fee.

The landlord served the tenant with a notice to inspect, and on September 23, 2014 the landlord's agents conducted an inspection and the tenant's items were still in the rental unit. However, by September 30, 2014 the tenant was gone and his vehicle was no longer in the parking lot of the rental complex. The tenant has not returned the key to the rental unit.

The rental unit was re-painted and was re-rented by November 7, 2014, and the landlord withdraws the application for an Order of Possession. The landlord's agent testified that rental units are always advertised, but has no evidence of why it needed to be re-painted or how or when the unit was advertised for rent.

The tenant has not provided the landlord with a forwarding address.

Analysis

I accept the testimony of the landlord's agent, and I am satisfied that the tenant was served with the notice to end tenancy and that the tenant did not pay the rent but moved out of the rental unit, and the landlord has established a monetary claim for \$1,100.00 for September's rent.

I have also reviewed the tenancy agreement and note that it contains a clause that the tenant will pay \$50.00 for each N.S.F. cheque, but nowhere does it indicate a fee for

late rental payments. The regulations to the *Residential Tenancy Act* specify that a late payment fee of no more than \$25.00 can be applied to late rent if it is contained in the tenancy agreement, and the landlord is entitled to claim the amount charged by the landlord's financial institution for a returned cheque. However, I have no evidence before me that the landlord was charged any fee for the N.S.F. cheque. Therefore, I decline to order the tenant to pay the N.S.F. fee or the late fee.

I order the landlord to keep the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00.

This order is final and binding and may be enforced.

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: November 10, 2014

Residential Tenancy Branch

