



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing addressed a claim by the landlord for an order of possession, a monetary order and an order to retain the security deposit. The landlord presented evidence that she personally served the tenant E.T. with the application for dispute resolution and notice of hearing on December 23, 2014. I found that E.T. had been properly served with notice of the claim against him and the hearing proceeded in his absence.

The landlord testified that the tenant C.R.B. had passed away. As the landlord did not serve C.R.B.'s estate with notice of the claim against him, I dismiss the claim as against C.R.B. Although C.R.B.'s name remains in the style of cause, the enclosed orders are enforceable against E.T. alone.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on February 1, 2006 at which time the tenant paid a \$425.00 security deposit. After several rent increases, the tenant is currently obligated to pay \$987.00 in advance on the first day of each month. The tenant failed to pay rent in the month of December and on December 4, the landlord personally served him with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The tenant paid rent for December outside of the 5 day period specified by the Act. The landlord seeks to recover \$146.00 in lost income for the month of January as the tenant failed to pay that amount in occupational rent, \$987.00 in lost income for the month of February, a \$20.00 late payment fee for each of those months and the \$50.00 filing fee paid to bring her application.

Analysis

I accept the landlord's undisputed testimony and I find that the tenant received the Notice on December 3, 2014. The tenant did not dispute the Notice and did not pay the arrears within 5 days of receipt and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord is entitled to an order of possession and I grant her that order. The order must be served on the tenant and may be filed in the Supreme Court for enforcement if required.

I find that the tenant failed to pay \$146.00 of the \$987.00 in occupational rent for the month of January 2015 and I find that the landlord has lost \$146.00 in income as a result. I find that the landlord is entitled to recover this lost income and I award her \$146.00.

The landlord has not yet lost income for the month of February and as it may be possible for the landlord to re-rent the unit for that month, I dismiss the claim for lost income for the month of February with leave to reapply.

Because the tenancy ended on December 13 pursuant to the Notice, I find that the tenant was not under an obligation to pay rent in January and therefore cannot be subject to a late payment fee. I dismiss the claim for a late payment fee for January and February.

As the landlord has been substantially successful in her claim, I find she should recover the filing fee and I award her \$50.00.

The landlord has been awarded a total of \$196.00 which represents \$146.00 in lost income for January and the \$50.00 filing fee. I order the landlord to retain this amount from the security deposit which will leave a balance of \$229.00. When the tenant has vacated the unit, the landlord should deal with the remaining security deposit in accordance with the Act.

Conclusion

The landlord is granted an order of possession and will retain \$196.00 from the security deposit, leaving a balance of \$229.00.

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: January 20, 2015

Residential Tenancy Branch

