



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Barafield Realty Ltd. c/o Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

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

Most of the facts are not in dispute. The tenancy began on July 1, 2014 and the tenants paid a security deposit of \$460.00. The tenants were obligated to pay \$920.00 in rent in advance on the first day of each month. The tenants did not pay rent in the month of December and on December 24, 2014 the landlord served the tenants with a notice to end tenancy for unpaid rent (the "Notice").

The tenants testified that they vacated the rental unit on January 1 and that when they received the Notice, they advised the landlord that they would be moving on that date. The landlord acknowledged that they had told him they would be moving but he testified that he did not take them seriously and did not check the rental unit during January to determine whether they had vacated.

The landlord seeks an order of possession and seeks to recover unpaid rent for December and lost income for the months of January and February as well as the \$50.00 filing fee paid to bring his application.

Analysis

The landlord did not wish to withdraw the application for an order of possession as he had not yet been to the rental unit to determine whether the tenants had in fact vacated. As the tenants have vacated the rental unit and as they did not dispute the Notice, I find it appropriate to grant the landlord an order of possession. This order may be enforced at the Supreme Court if required.

I find that the tenants were obligated to pay \$920.00 in rent for the month of December and that they failed to do so. I find that the landlord is entitled to recover the arrears and I award him \$920.00.

In order for the landlord to succeed in a claim for lost income, he is obligated to prove that he made reasonable attempts to mitigate his losses. The landlord was told by the tenants that they would be vacating on January 1 and should at the very least have attended the unit on or about that date to determine whether in fact the unit was vacant. Instead, he chose not to inquire and made no attempt to re-rent the unit. Because the landlord posted the Notice on the door of the rental unit, it was deemed received 3 days later on December 27. The tenants were not obligated under the provisions of the Notice to vacate the unit until January 6 but vacated sooner in order not to be held responsible for January's rent.

I find that even had the landlord begun advertising as soon as he heard that the tenants intended to vacate the unit on January 1, it is unlikely that he would have found new tenants for that date. However, I find it very possible that he could have secured new tenants for January 15 had he made an effort. I find that the landlord is entitled to recover one half of January's rent and I dismiss the claim for the other half of January's rent and for February's rent due to the landlord's failure to mitigate his losses. I award the landlord \$460.00.

As the landlord has been somewhat successful in his claim, I find that he should recover the filing fee and I award him \$50.00.

The landlord has been awarded a total of \$1,430.00. I order the landlord to retain the \$460.00 security deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for the balance of \$970.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$970.00. The landlord will retain the security deposit.

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 21, 2015

Residential Tenancy Branch

