



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAHAR INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – OPR, MND, MNSD, FF. O

For the tenant – CNC, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application. The landlord withdrew his application for a Monetary Order for damage to the unit, site or property at this time and requested to amend his application to recover unpaid rent. The tenant applied to cancel the Notice to End Tenancy for cause; for a Monetary order for the cost of emergency repairs, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application, as the tenant has failed to present the merits of their application. Consequently the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 23, 2015. Canada Post tracking numbers were provided by the landlord in oral testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on October 01, 2001. Rent for this unit is \$587.00 per month and is due on the 1st day of each month. The tenant paid a security deposit of \$260.00 on October 01, 2001.

The landlord testified that the tenant failed to pay all the rent due on February 01, 2015 leaving an unpaid balance of \$48.00. This amount had accumulated over the course of a few months as the Ministry paid the majority of the tenant's rent and the tenant had to pay \$12.00 a month towards her rent which she continually failed to do. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 03, 2015. The 10 Day Notice was served upon the tenant in person on that date. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 28, 2015. A One Month Notice to End Tenancy was also served upon the tenant in January, 2015. The tenant did apply to dispute the One Month Notice but did not file an application to dispute the 10 Day Notice.

The landlord testified that the tenant did pay the outstanding rent of \$48.00 on February 12, 2015. As this was paid outside the five day time frame the landlord accepted the rent but issued the tenant with a receipt that stated it was for occupancy only. A copy of the receipt has been provided in evidence. The landlord testified that the Ministry have paid \$575.00 towards the tenant's rent for March, 2015 and the tenant has failed to pay the balance of \$12.00. The landlord seeks to amend their application to include the unpaid rent for March of \$12.00. The landlord testified that it appears that the tenant has vacated the rental unit as of March 24, 2015;

however, the landlord still seeks an Order of Possession in the event the tenant attempts to return to the rental unit.

The landlord seeks an Order to retain part of the security deposit to offset against the unpaid rent and the \$50.00 filing fee.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenant on February 03, 2015. The tenant did not pay the outstanding rent until February 12, 2015 which was nine days later the Notice was deemed to have been served. I therefore accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As that date has since passed I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

I find the tenant failed to pay the balance of rent for March of \$12.00. I have allowed the landlord to amend their application to include unpaid rent for March as the tenant has continued to reside in the rental unit past the effective date of the Notice and would be aware that rent must be paid in full on March 01, 2014.

As the landlord has been successful the landlord is also entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

I order the landlord to retain the amount of **\$62.00** from the security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of the security deposit must be either returned to the tenant or dealt with in accordance with s. 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service upon the tenant**. This order must be served on the Respondent. If the Respondent fails to comply with this Order the Order may be filed in the Supreme Court and enforced as an Order of that Court.

If the landlord confirms that the tenant has provided vacant possession of the rental unit then the landlord is not compelled to serve this Order of Possession upon the tenant.

The tenant's application is dismissed in its entirety without leave to reapply.

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: March 25, 2015

Residential Tenancy Branch

