



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing. At the commencement of the hearing the tenant requested that the landlord's application be adjourned to be heard together with an application by the tenant scheduled to be heard on May 20, 2015. In the tenant's application, which was filed on April 9, 2015, he complained that he was experiencing financial hardship and this was due to the landlord's refusal to allow him to downsize and move to a smaller, less expensive apartment. I advised the tenant that he has not applied to dispute the landlord's Notice to End Tenancy for unpaid rent and his matter raised by his pending application did not constitute a ground for non-payment of rent.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on October 1, 2010. The current rent is \$1,485.00 per month, including a \$50.00 parking charge due in advance on the first day of each month. The tenant paid a security deposit of \$685.00 on September 3, 2010. The tenant said that he has lived in other rental units at the rental property since 2003, but this tenancy did not begin until October 1, 2010. The tenant did not pay rent for March when it was due. On March 3, 2015 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it the door of the rental unit. The tenant acknowledged at the hearing that he has not paid the rent for March or for April and that he did not apply

to dispute the Notice to End Tenancy, but he blamed the landlord's refusal to allow him to "downsize" to a less expensive unit for his financial difficulties.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$2,970.00 the outstanding rent for March and April. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$3,020.00. I order that the landlord retain the deposit and interest of \$685.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,335.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 23, 2015

Residential Tenancy Branch

