



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a Notice to End Tenancy;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and
3. To have the landlord make emergency repairs.
- 4.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Tenant's application

This matter was set for hearing by telephone conference call at 10:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 10:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on June 12, 2015 and the amended application was sent by registered mail on July 22, 2015. Canada post tracking numbers were provided as evidence of service.

The agent indicated the packages were returned unclaimed. The agent stated that they also posted copies to the tenant's door and placed copies in the tenant's mail box.

Based on the above testimony, I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the landlord's requested to amend their application to include unpaid rent for August 2015. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for unpaid rent for August 2015.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenant was served with a notice to end tenancy for non-payment of rent on July 7, 2015. This is confirmed by the tenant in the tenant's application for dispute resolution, which I have dismissed.

The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord's agent testified that the tenant did not pay the rent July 2015, and has not paid rent for August 2015. The landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,696.00.

The landlord's agent seeks to offset the above amount with the tenant's security deposit in the amount of \$250.00.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Although the tenant filed an application to dispute the notice, I find it was not filed within five days as required by the Act. Further, I find the tenant's application had no merit as rent was not paid and the tenant did not have the authority under the Act to withhold rent. I find the tenant has breached section 26 of the Act, when they failed to pay rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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.

I find that the landlord has established a total monetary claim of **\$1,746.00** comprised of unpaid rent for July 2015, August 2015 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$250.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$1,496.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Although the landlord had also requested an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause, I find it not necessary for me to consider that matter as the tenancy has legally ended.

Conclusion

The tenant failed to pay rent.

The landlord is granted an order of possession, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: August 05, 2015

Residential Tenancy Branch

