



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified they served the Tenant with the Notice of Hearing and their Application on June 19, 2015, by serving the Tenant in person. I find the Tenant was duly served.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord requested to retain the security deposit in partial satisfaction of the rent that was owed. The Landlord also did not claim for the filing fee for the cost of the Application, although they intended to do so. Therefore, I have amended the Application to include the claim for one month of rent for June 2015 and to recover the filing fee for the cost of the Application.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on June 9, 2015, by personal service. The 10 day Notice to End Tenancy was dated June 8, 2015, and had an effective date of June 18, 2015, and was for \$320.00 in unpaid rent (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Agent for the Landlord testified that the Tenant has not paid the rent and has not served them with documents indicating he has disputed the Notice. The Agent testified that in fact the Tenant had already given his own notice to end tenancy to the Landlord in March of 2015, but has failed to vacate the rental unit and is no longer paying rent. According to the Agent for the Landlord the Tenant has informed her that he will not move out until just before the bailiff comes to move him or words to that effect.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I further note that under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation there is no evidence that the Tenant had authority under the Act to not pay rent.

Therefore, 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.

I find that the Landlord has established a total monetary claim of **\$370.00** comprised of \$320.00 for the Tenant's portion of the subsidized rent for June 2015, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$172.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$197.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord has leave to apply for unpaid rent that is still due.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

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

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 17, 2015

Residential Tenancy Branch

