



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent and a monetary order for unpaid rent.

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

The Agent testified she served the Tenant with the Notice of Hearing and their Application in person on July 12, 2015. The Tenant did not attend the hearing, and I find the Tenant was duly served with the Notice of Hearing and the Application.

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 Issues

The Landlord had not applied to keep the security deposit or for the return of the filing fee for the cost of the Application. The Agent for the Landlord requested these at the hearing and I have amended the Application accordingly.

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

This tenancy began on November 4, 2013, with the parties entering into a written tenancy agreement. The monthly rent was \$950.00 due on the first day of the month. The Tenant paid a security deposit of \$475.00 at the start of the tenancy. No interest is payable on deposits collected in 2013.

The Agent testified that the Tenant owed a balance of rent of \$300.00 from March 2015 rent, and had not paid the monthly rent of \$950.00 for the months of April, May, June, July, August and September. This amounts to \$6,000.00 due in rent.

The Agent testified that the Tenant made partial payments as follows: \$600.00 on July 3rd; \$350.00 on July 9th; \$1,100.00 on July 21st; and \$950.00 on August 24th, 2015. This amounts to \$3,000.00 in partial payments leaving a balance due of \$3,000.00 as of today. The Agent testified she issued receipts for these payments for use and occupancy only.

Based on the affirmed 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 due for March, April, May, June and July on July 1, 2015, by personal service (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid in full 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.

Analysis

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

The Tenant has not paid all 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 corrected effective date of the Notice, July 12, 2014. Under the Act, Notices with incorrect effective dates automatically correct.

Although the Notice was served on July 1, the day July rent was due, it included sums owed for March to June, in addition to the July rent, and therefore, I do not find the Notice was invalid. Furthermore, under section 68 of the Act, I amend the Notice to be dated on the correct date of July 2, 2015, the day after the July rent was due.

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 the Tenant had no authority under the Act to not pay rent.

I find that the Tenant has also not paid rent for August and September of 2015, and the Landlord will suffer a loss of rent for these months. It should have been anticipated by the Tenant that all outstanding rent would be claimed at this hearing. Therefore, I allow the claim to be amended to include two additional months of rent.

I find that the Landlord is still holding the security deposit of \$475.00, and has suffered a loss due to the breach of the Tenant. Under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit. Furthermore, pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

As the Tenant has failed to pay all rent that was due and did not apply to dispute the Notice, 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 **\$3,050.00** comprised of the balance of rent due after the Tenant's partial payments are taken into account and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,575.00**.

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

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is conclusively presumed under section 46 of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice to End Tenancy that is July 12, 2015.

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 of **\$2,575.00**.

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: September 14, 2015

Residential Tenancy Branch

