Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding Fredo Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The named landlord attended the hearing and also represented the landlord company. The tenant also attended. The parties each gave affirmed testimony, provided evidentiary material and were given an opportunity to question each other with respect to the testimony and evidence provided, all of which is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began in a different rental unit within the landlords' rental complex on January 1, 2015, then, a few months later the tenant moved into this rental unit under the same tenancy agreement, a copy of which has been provided. Two tenants reside in the rental unit and are both named as tenants on the tenancy agreement. Rent in the amount of $820.00 per month is payable in advance on the 1st day of each month, and the landlord has always collected rent separately from each of the 2 tenants in the amount of $410.00. The other tenant has paid the share of rent and paid the landlord a security deposit in the amount of $80.00, but this tenant has not paid any portion of a security deposit. The tenancy agreement specifies a security deposit in the amount of $410.00 by the 1st of January, 2015.

On September 25, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, with a witness present. A copy of the notice has been provided and it is dated September 25, 2015 and contains an effective date of vacancy of October 6, 2015 for unpaid rent in the amount of $2,255.00 that was due on, "30 Each 2015." The landlord testified that the tenant has only paid rent once, and no rent has been paid by the tenant since the notice was served. The amount contained in the notice includes the unpaid security deposit.

The landlord further testified that the tenant has served the landlord with an application for dispute resolution, however it claims monetary compensation in the amount of $1,600.00, an order that the landlord comply with the *Act*, regulation or tenancy agreement, an order that the landlord make repairs to the unit, site or property, for an order that the landlord return the tenant's personal property, but does not seek to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord requests an Order of Possession and a monetary order in the amount of $410.00 for unpaid rent for the months of June, July, August, September and October, 2015 as well as loss of rental revenue for November, 2015.

The tenant testified that he and his roommate spent a month cleaning from previous tenants. The landlord also allowed a previous tenant access to the tenant's storage facility and the tenant's belongings were not safe. The tenant testified that he did not feel it appropriate to pay rent to the landlord when the landlord owes the tenant money.

The tenant has filed an application for dispute resolution on September 25, 2015 seeking monetary compensation from the landlord in the amount of $1,600.00, and that hearing is scheduled for November.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord has failed to comply with the *Act* or the tenancy agreement. Therefore, failure to pay rent believing the landlord owed the tenant money is not a defence.

The *Act* also states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord testified that the notice was served on September 25, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 28, 2015. The tenant did not dispute that testimony, and did not pay the rent in full or dispute the notice by October 3, 2015, and

therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has already passed, I grant the order on 2 days notice to the tenant.

With respect to the landlord's monetary claim, the landlord testified that the tenant hasn't paid any rent for the months of June, July, August, September or October, 2015, and the tenant didn't dispute that. I therefore accept the testimony of the landlord and I find that the landlord has established a monetary claim in the amount of $2,050.00. I am not satisfied that the landlord has established loss of rental revenue for the month of November, 2015.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the $50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,100.00.

These orders are final and binding and may be enforced.

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: October 30, 2015

_____
Residential Tenancy Branch