



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on March 1, 1996. Rent of \$1,179.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$367.50 as a security deposit from the Tenant. The tenancy agreement provides for an escalating late fee up to \$30.00 per month. The Tenant failed to pay rent for August 2015 and on August 10, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for

unpaid rent (the "Notice") by posting the Notice on the door. The Tenant has not made an application for dispute resolution, has not paid the arrears and has not moved out of the unit. The Landlord claims \$1,179.00 for rental arrears and \$1,179.00 for unpaid rent for each of September and October 2015. The Landlord also claims late fees of \$25.00 for two months. The Tenant does not dispute the unpaid rent and states that it is her intention to have the rental arrears paid and to remain in the unit.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") 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 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. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on undisputed evidence I find that the Tenant was given a valid Notice. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$3,537.00** in unpaid rent.

Section 7 of the Residential Tenancy Regulations provides that a late rent fee may be no greater than \$25.00. Section 5 of the Act provides that any attempt to contract out of the Act is of no effect. As the late fee is not in accordance with the Act I find that this is an attempt to contract out of the Act and that the late fee provision contained in the tenancy agreement is therefor of no effect. I dismiss the claims for late fees.

The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$3,587.00**. Setting the security deposit of \$367.50 plus **\$58.90** in interest off the entitlement leaves **\$3,160.60** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2015.

I order that the Landlord retain the **deposit** and interest of \$426.40 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,160.60**. If necessary, 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: October 05, 2015

Residential Tenancy Branch

