



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HY-WEST HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, MNSD, FF (Landlord's Application)
MT, CNC, FF (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on September 4, 2015 and by the Landlord on September 9, 2015.

The Landlord applied for an Order of Possession for cause, to keep the Tenant's security deposit, and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for cause, for more time to cancel the notice to end tenancy, and to recover the filing fee from the Landlord.

Preliminary Issues

An agent for the Company Landlord named on the Landlord's Application (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenant during the 10 minute duration of the hearing, despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlord's Application. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that the Tenant was served with their Application by registered mail on September 14, 2015. The Landlord provided the Canada Post tracking number in oral evidence, which was noted on the inside of the file, to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on September 19, 2015 pursuant to the Act.

The hearing continued to hear the undisputed evidence of the Landlord. The Landlord testified that she had not been served with the Tenant's Application even though the Tenant had informed her that he had made one and that he was in the process of serving it to her. As the Tenant failed to appear for the hearing and present the merits of his Application or provide evidence that his Application was served to the Landlord, I dismiss the Tenant's Application without leave to re-apply.

The Landlord testified that it had come to her attention that on or about September 20, 2015, the Tenant had abandoned the rental unit. As the Landlord had received vacant possession of the rental unit, the Landlord withdrew her Application for an Order of Possession.

The Landlord explained that she had appeared for this hearing to keep the Tenant's security deposit in lieu of unpaid rent. As this was the only item the Landlord was seeking, the Landlord withdrew her claim for the recovery of the filing fee as the Landlord stated that this small amount was not worth pursuing.

Issue(s) to be Decided

Is the Landlord able to keep the Tenant's security deposit in satisfaction of unpaid rent for September 2015?

Background and Evidence

The Landlord testified that this tenancy started on June 1, 2015 on a month to month basis. A written tenancy agreement was completed and rent was payable by the Tenant in the amount of \$750.00 on the first day of each month. The Tenant paid a security deposit of \$375.00 on June 1, 2015 which the Landlord still retains.

The Landlord testified that on July 31, 2015 she personally served the Tenant with a notice to end tenancy for cause (the "Notice"). The Notice had an effective vacancy date of August 31, 2015. However, the Tenant indicated to the Landlord near the time the Notice was to take effect that he would not be leaving the rental unit and that he had filed to dispute the Notice.

The Landlord testified that on September 1, 2015 the Tenant had failed to vacate the rental unit and also failed to pay rent in the amount of \$750.00. As a result, the Landlord made her Application for the Order of Possession. The Landlord testified that she was not informed by the Tenant either in writing or verbally that he was going to leave the

rental unit on September 20, 2015. The Landlord confirmed that the Tenant has not provided a forwarding address in writing since leaving the rental unit.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent for September 2015 in the amount of \$750.00. I also accept the Landlord's undisputed evidence that the Tenant overheld the tenancy by continuing to occupy the rental unit after the vacancy date of the Notice had expired. Therefore, I grant the Landlord's Application and give permission for the Landlord to keep the Tenant's security deposit to satisfy unpaid rent for September 2015.

Conclusion

The Tenant breached the Act by not paying rent. Therefore, the Landlord may keep the Tenant's security deposit to satisfy the monetary claim. The Landlord withdrew the Application requesting an Order of Possession and the filing fee. The Tenant's Application is dismissed in its entirety **without** leave to re-apply as the Tenant failed to appear for the hearing.

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: November 05, 2015

Residential Tenancy Branch

