



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Barafield Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for an order cancelling the landlord's Notice to End Tenancy dated July 16, 2015. The hearing was conducted by conference call. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on July 1, 2015. The rent is \$910.00 due in advance on the first day of each month. The tenant paid a security deposit of \$455.00 at the start of the tenancy.

The tenant moved into the unit on July 1st and discovered that the unit was infested with cockroaches. The tenant advised the resident caretaker of the situation and said that she was going to be moving out of the unit as soon as possible. As a sympathetic gesture, the landlord refunded the tenant her July rent on the expectation that she was moving out. However, the tenant then decided not to move out of the rental unit and refused to pay the landlord rent for July. On July 16, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for non-payment of rent. The tenant disputed this Notice by filing an Application for Dispute Resolution on July 17, 2015.

The tenant has not paid any rent for the months of July through December.

Analysis

Landlord's Claim

Order of Possession - Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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. In the present case the tenant did dispute the Notice but failed to pay the rent. As a result, the landlord is entitled to an order of possession.

Monetary Order - The landlord has made a monetary claim in the amount of \$5,460.00 comprised of \$910.00 in rent for each month from July through December. The tenant was required to pay the rent each month but failed to do so. The tenant believed that she could withhold rent due to the cockroach problem but I explained to her that that was not the case. Accordingly, the landlord is entitled to a monetary order in the amount requested.

Tenant's Claim

Cancel Notice – The tenant applied to have the landlord's Notice cancelled. However, at the hearing the tenant acknowledged that she had not paid the rent for July or for any month since then. As a result, the tenant's application for an order cancelling the landlord's Notice is dismissed.

Conclusion

Order of Possession - Based on the above background, evidence and analysis 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.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$5,460.00 in outstanding rent for July through December. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$5,510.00. I order that the landlord retain the deposit and interest (\$0.00) of \$455.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,055.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Cancel Notice – The tenant's application is dismissed.

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: December 07, 2015

Residential Tenancy Branch

