



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Public Guardian and Trustee Committee for the Estate of Grace Yee
The Wynford Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, MNR, OPR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on December 17, 2015 for:

1. More time to make its application - Section 66;
2. An Order cancelling a notice to end tenancy - Section 46; and
3. A Monetary Order for emergency repairs - Section 67;

The Landlord applied on June 21, 2011 for:

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

The Tenant and Landlord were each given full opportunity under oath 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 unpaid rent?

Is the Tenant entitled to compensation for repairs done to the unit and for the payment of hydro?

Background and Evidence

The Landlord has no copy of a written tenancy agreement and no direct evidence of the terms of the tenancy. The Landlord has knowledge of the tenancy only based on the Tenant's information to them. The Tenant states that the tenancy started November 1, 2014. The Tenant states that \$400.00 per month is payable as rent on the first day of each month. The Tenant states that the Landlord collected \$200.00 as a security deposit.

The Parties agree that the Tenant has not paid any rent from August to December 2015 inclusive. The Landlord states that after they became agents for the Public Trustee in this matter they requested payment of the rent from the Tenant in November 2015. The Landlord states that on December 9, 2015 the Tenant was given a 10 day notice for unpaid rent (the "Notice") by posting the Notice on the door. The Landlord states that the Tenants have not paid any rent since. The Landlord claims \$2,250.00.

The original landlord lived in the upper unit. The Tenant states that this person was found deceased in June 2015. The Tenant states that nobody told him who to pay the rent to until contacted by the current Landlord. The Tenant states that by this time the rent monies had been spent by the Tenant. The Tenant states that the hydro was going to be cut off so the Tenant paid the amounts owed. The Tenant states that hydro is included in the rent. The Tenant claims reimbursement for payment of the hydro and provides receipts that total \$862.00. The Landlord reviewed those receipts and does not dispute \$850.00 for the reimbursement.

The Tenant states that after the death of the original landlord the oven stopped working and the Tenant found a used oven for \$200.00 to replace the old oven. The Tenant claims this amount with no receipt provided.

The Landlord does not dispute the Tenants' claim for costs to repair a leaking water tank in August in the amount of \$254.83.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy where rent is unpaid by serving a notice to end tenancy. This same section provides that upon receipt of a 10 day notice to end tenancy for unpaid 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. Section 90 of the Act provides that a document served by posting on a door is deemed to be received on the 3rd day after it is posted. As the Notice was served by posting on the door on December 9, 2015 I find that it was deemed received on December 12, 2015 and that the Tenant made its application within 5 days of this date. As a result the Tenant does not require more time as the application to dispute the Notice was made within the time allowed. Based on the undisputed evidence that rents are owed for August to December 2015 inclusive I find that the Notice is valid and that the Tenant is not entitled to its cancellation. As the Notice is valid the Landlord is entitled to an **order of possession**.

I also find that the Landlord is entitled to unpaid rent of **\$2,250.00**. As the Landlord's application has been successful I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,300.00**. Deducting the Tenant's security deposit plus zero interest of **\$200.00** from this amount leaves the Tenant owing **\$2,100.00** to the Landlord.

Based on the undisputed evidence that following the death of the original landlord the Tenant paid for repairs to the water tank in the amount of **\$245.83** and considering the receipts provided for the payment of hydro by the Tenant in the amount of **\$862.00**, I find that the Tenant is entitled to these amounts. Although the Tenant did not provide a receipt for the used stove I found the Tenant's overall evidence to be truthful and sincere and considering that the Landlord did not dispute that the Tenant had to replace

the stove, I find that the Tenant has substantiated reasonable compensation of **\$200.00** for the purchase of a used stove for a total entitlement of **\$1,307.83**. Deducting the Tenant's entitlement of **\$1,307.83** from the **\$2,100.00** owed to the Landlord leaves **\$792.17** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$200.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$792.17**. 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: February 05, 2016

Residential Tenancy Branch

