



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on January 19, 2016 and has provided a copy of a Registered Domestic Customer Receipt addressed to the tenant and stamped with that date by Canada Post. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

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?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on December 1, 2014 and expired on November 30, 2015 thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,400.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a town-house within a complex, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant fell into arrears of rent, and currently owes \$3,350.00 to the end of March, 2015. On January 5, 2016 another agent of 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. A copy of the notice and a Proof of Service Document signed by the agent who served the notice have been provided. The notice is dated January 5, 2016 and contains an effective date of vacancy of January 14, 2016 for \$1,400.00 of unpaid rent that was due on January 1, 2016.

On January 22, 2016 the tenant paid the landlord \$900.00, leaving a balance of \$500.00 outstanding at that time, for which the landlord issued a receipt showing that the money was being collected for use and occupancy only. The tenant has not paid any rent since.

The landlord seeks an Order of Possession and a monetary order for the outstanding rent and an order permitting the landlord to keep the \$700.00 security deposit in partial satisfaction of that claim.

Analysis

The *Residential Tenancy Act* 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 tenant paid some rent but not entirely, and has not paid any rent since. The landlord's agent testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice, and I have no such application before me. 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, changed to the nearest date that complies with the *Act*, being January 18, 2016 has already passed, I grant the order on 2 days notice to the tenant.

With respect to the monetary claim, I accept the undisputed testimony of the landlord that the tenant owes \$500.00 for January rent and \$1,400.00 for February rent. With respect to rent for March, 2016, I am not satisfied that the landlord will not be able to re-rent the rental unit prior to April 1, 2016, and therefore, I grant the landlord a monetary order for half of March rent, or \$700.00. Should the landlord suffer any further losses of rental revenue as a result of the tenant's failure to comply with the Order of Possession or with the Act, the landlord will be at liberty to apply for further relief.

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

I hereby order the landlord to keep the \$700.00 security deposit in partial satisfaction of the claims and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$1,950.00.

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 order the landlord to keep the \$700.00 security deposit and I 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 \$1,950.00.

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: March 02, 2016

Residential Tenancy Branch