



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application for dispute resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail deemed delivered February 8, 2016, the tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to retain the security deposit?

Background and Evidence

This month-to-month tenancy commenced March 1, 2014. At the beginning of the tenancy the monthly rent was \$850.00 but was subsequently increased to \$870.00 per month. The rent is due on the first day of the month. The tenant paid a security deposit of \$425.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The landlord testified that the tenant did neither.

The landlord testified that the tenant had not paid the rent for December, January, February and March and the arrears total \$3480.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act*

to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

Although the landlord established that the rent had not been paid for the period December to March, the landlord had only claimed arrears of rent for December, January and February in the amount of \$2610.00 on the Application for Dispute Resolution. When a respondent does not appear at the hearing the arbitrator cannot award more than the amount claimed on the Application for Dispute Resolution served on the respondent. Accordingly, I find that the landlord has established a total monetary claim of \$2710.00 comprised of arrears of rent in the amount of \$2610.00 and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2285.00. If the landlord wishes to claim against the tenant for the March rent and any future loss of income, it must file and serve a new application for dispute resolution on the tenant.

Conclusion

- a. An order of possession effective **two days after service** on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of **\$2285.00** has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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: March 22, 2016

Residential Tenancy Branch