



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, DRI

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the 2 submitted documentary evidence packages via Canada Post Registered Mail on March 15, 2016. The tenant confirmed receipt of the landlord's notice of hearing package and the landlord's submitted documentary evidence. The tenant confirmed that no documentary evidence was submitted. The landlord confirmed receipt of the tenant's notice of hearing package. As both parties have attended and have confirmed receipt of the notice of hearing packages from the other party and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset the landlord stated that some rental arrears had been paid and that as of the date of this hearing, the tenant was in arrears for \$640.65. The landlord is now amending the monetary claim and lowering from \$1,390.65 to \$640.65.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on May 1, 2014 on a fixed term tenancy ending on April 30, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 25, 2014. The monthly rent was \$725.00 payable on the 1st day of each month and a security deposit of \$362.50 was paid on April 16, 2014.

The landlord seeks an order of possession and a monetary order for unpaid rent and late rent fees.

The tenant seeks an order cancelling the notice to end tenancy as the landlord has increased the rent without proper notice.

The landlord stated that the tenant was served with the 10 Day Notice dated December 7, 2015 which stated that the tenant failed to pay rent of \$943.13 which was due on December 1, 2015. The 10 Day Notice also displays an effective end of tenancy date of December 17, 2014.

The landlord stated that the rental arrears were based upon a notice of a rent increase dated August 31, 2015. The tenant disputed that he was never served with a notice of rent increase. The landlord stated that these notices were normally posted to the rental unit doors, but is unable to provide any details of service.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated December 7, 2015 by posting it to the rental unit door on December 7, 2015.

Both parties agreed that the tenancy agreement was amended during a settlement agreement on September 23, 2015 where the rent was agreed to be \$625.00. The agreement stated that,

...If the tenant is late with one more payment of rent, rent will revert to \$725.00 per month. Rent is due on or before the first day of each month.

The tenant argued that he was never served a notice of rent increase dated August 15, 2015 to be effective on December 1, 2015.

Analysis

The landlord's rental arrears claim is based upon a notice of rent increase dated August 15, 2015 which the tenant has disputed receiving. The landlord is unable to provide any details of service regarding the notice of rent increase other than to state that the notice was normally posted to the rental unit door. I find on a balance of probabilities that the tenant was not properly served with the notice of rent increase as the landlord is unable to provide any supporting evidence of service or any further details of the service. The landlord's notice of rent increase dated August 31, 2015 is set aside.

As the landlord's claim of the 10 Day Notice for rental arrears is based solely on the notice of rent increase, I find that the landlord's 10 Day Notice dated December 7, 2015 is set aside. The tenancy shall continue. The tenant's application is granted.

As the tenant has been successful, I find that the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed. The 10 Day Notice dated December 7, 2015 is set aside. The tenancy shall continue.

The tenant's application is granted.

The tenant is granted a monetary order for recovery of the \$50.00 filing fee.

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: April 19, 2016

Residential Tenancy Branch