



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Intra-Pacific Buildings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant did not appear although he was served with the Application for Dispute Resolution and Notice of Hearing by registered mail. The tenant's mail has been returned unclaimed. The landlord is unsure of the tenant's whereabouts. The landlord's agent has received an unconfirmed report that the tenant is deceased although there are occupants living in the rental unit, who have made some partial rent payments since the application and Notice of Hearing were sent by registered mail.

Issues

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

This tenancy began on August 20, 2004. The rent is \$795.00 due in advance on the first day of each month. The tenant paid a security deposit of \$397.50 at the start of the tenancy. The tenant did not pay rent for May, 2016 when it was due. On May 6, 2016 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by registered mail. The Notice to End Tenancy was returned unclaimed, but the tenant was deemed to have received the Notice on the 5th day after it was mailed.. The tenant did not pay the rent for May within five days and he did not file an application to dispute the Notice to End Tenancy.

After the Notice to End Tenancy was sent the landlord's agent attended at the rental unit. The occupants of the rental unit who have not been identified but who claim possession by or through the tenant have made some rent payments by cash and bank draft. They paid the sum of \$1,590.00 by bank draft on June 13, 2016 and they made a

further payment of \$550.00 in cash on July 5, 2016. The landlord issued a receipt for the cash payment: "for use and occupancy only". There is a balance of \$245.00 still unpaid for July. The landlord requested an order of possession, a monetary award for the outstanding balance and recovery of the filing fee for this application. The landlord requested that the monetary award be retained from the security deposit held by the landlord.

Analysis

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. The payments received by the landlord were not made within five days of the deemed service date of the Notice to End Tenancy and the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice

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 July 31, 2016, 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 \$245.00 for unpaid rent for July. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$345.00. I order that the landlord retain the said sum of \$345.00 from the deposit and interest of \$411.58, leaving a deposit balance of \$66.58 to be dealt with in accordance with the *Residential Tenancy Act* at the end of the tenancy.

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: July 20, 2016

Residential Tenancy Branch