



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's representatives called in and participated in the hearing. The tenant also called in and participated. The tenant was served with the application and Notice of Hearing by registered mail sent on July 29, 2016.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order to retain the security deposit?

Background and Evidence

This tenancy began on April 1, 2015. The initial monthly rent was \$1,045.00, payable on the first of each month. The tenant paid a security deposit of \$522.50 at the start of the tenancy. The landlord served the tenant with a Notice of Rent Increase on April 21, 2015. Pursuant to the Notice the rent was increased by \$30.00 per month to \$1,075.00 per month effective August 1, 2016.

The tenant did not pay rent for July when it was due. She paid part of July rent, leaving \$545.00 unpaid for July. On July 8, 2016 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenant did not pay the outstanding rent within five days of receiving the Notice to End Tenancy. On July 28, 2016 the tenant paid the landlord the sum of \$600.00 in payment of the balance of July rent plus an additional \$55.00 for accrued late fees. The landlord issued a receipt for the payment with the notation that the payment was accepted "for use and occupancy only".

The tenant did not file an application to dispute the Notice to End Tenancy and she has not paid rent for August or September. At the hearing the tenant said she wished to come to an arrangement with the landlord and to continue her tenancy. She said that she withheld rent for August and September because the landlord gave her a notice advising her that she was not allowed to have a pet dog in the rental unit. The tenant complained that she has been harassed by the one of the landlord's representatives. She said that she would be prepared to pay the landlord the sum of \$400.00 now and the balance of the rent for August and September within 10 days if the landlord would reinstate the tenancy.

The landlord's representative said that the landlord was not willing to accept the tenant's proposal and requested that the landlord be granted an order of possession and a monetary award for the unpaid rent.

Analysis

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. The tenant has not provided evidence of any reason why she should be excused from her obligation to pay rent when it is due.

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 tenant did not pay the rent in full within five days of her deemed receipt of the Notice to End Tenancy which was on July 11, 2016. The tenant had until July 16, 2016 to pay the rent in full; it was not paid until July 28, 2016 and the payment was accepted "for use and occupancy only". The landlord did not agree to reinstate the tenancy and the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Which was July 18, 2016.

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 two days 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 \$2,150.00 for the outstanding rent for August and September. The landlord is entitled to late fees in the amount of \$25.00 for each of those months as provided by the tenancy agreement and to recover the \$100.00 filing fee for this application for a total award of \$2,300.00. I order that the landlord retain the deposit and interest of \$522.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,777.50. 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: September 14, 2016

Residential Tenancy Branch