



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession and to recover the filing fee from the Tenant.

The female Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the ten minute duration or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlords.

The Landlord testified that she served the Tenant on September 3, 2016 personally with a copy of the Application and the Notice of Hearing documents with her husband (the Co-Landlord named on the Application). Therefore, based on the undisputed evidence before me I find that the Landlords served the Tenant with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Do the Landlords require an Order of Possession?

Are the Landlords entitled to the filing fee paid to make the Application?

Background and Evidence

The Landlord testified that this tenancy for the two Tenants, one of whom is named on the Application and referred to in this Decision as the “Tenant”, started on October 1, 2014 on a month to month basis. A written tenancy agreement was signed by both Tenants and rent was payable in the amount of \$950.00 on the first day of each month. The Tenants paid a \$475.00 security deposit at the start of the tenancy which the Landlords still retain.

The Landlord testified that the Co-tenant provided written notice on July 20, 2016 to end the tenancy for the end of August 2016. As a result, the Landlords wrote to the remaining Tenant on the tenancy agreement and informed that as the Co-Tenant had provided written notice to end the tenancy for the end of August 2016, the Tenant was also required to vacate on this date and that that current tenancy agreement or a new one would not be entered into. The Landlords provided these documents into evidence for this hearing.

The Landlord testified that the Co-Tenant vacated the rental unit pursuant to the written notice at the end of August 2016 but the Tenant failed to do so. In addition, the Tenant failed to pay any rent for the time he overheld the tenancy. As a result, the Landlords had no choice but to make the Application on September 2, 2016.

The Landlord testified that the Tenant abandoned the rental unit on October 2, 2016 without paying any rent for September and October 2016. The Landlord also alleged that the Tenant had caused severe damage to the rental unit which the Landlords wanted to claim for in this hearing from the Tenant. The Landlord confirmed that they had now received vacant possession of the rental unit.

Analysis

In relation to the Landlord's Application for an Order of Possession, as the Landlords have now received vacant possession of the rental unit, this request is hereby dismissed.

I find that because the Landlords had to file the Application to seek an Order of Possession because the Tenant was still residing in the rental unit at that time, and there was no appearance by the Tenant for this hearing, I find the Landlords are entitled to the filing fee they paid to make the Application. I find that pursuant to Section 72(2) (a) of the Act, the Landlords are entitled to obtain this relief by deducting \$100.00 from the Tenants' security deposit which they currently hold in trust.

In relation to the Landlord's request for a Monetary Order for unpaid rent and damages to the rental unit requested in this hearing, the Landlords did not file or amend their claim for such an order in the Application and put the Tenants on notice of such a claim. Therefore, I was unable to make any findings on these amounts being claimed. However, the Landlords are at liberty to bring a monetary claim against the parties in this tenancy for these alleged costs.

Conclusion

The Landlords no longer require an Order of Possession as the Tenants have left. The Landlords may recover the \$100.00 filing fee from the Tenants' security deposit. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 26, 2016

Residential Tenancy Branch