



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 OP, MNDC, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing. The tenant acknowledged that he was served with the application, Notice of Hearing and landlord's documents. The landlord's representative confirmed at the hearing that the tenant has paid all rent outstanding and the landlord is no longer seeking a monetary award. the landlord application for a monetary order is therefore dismissed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a one month Notice to End Tenancy, or alternatively, pursuant to a mutual agreement to end tenancy?

Background and Evidence

The rental unit is a one bedroom apartment in Surrey. The tenancy began May 1, 2015 for a one year term and thereafter on a month to month basis. The initial monthly rent was \$775.00, payable on the first of each month. The tenant paid a \$250.00 security deposit and a \$200.00 pet deposit at the start of the tenancy.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated July 23, 2016 by posting it to the door of the rental unit. The tenant acknowledged that he received the Notice to End Tenancy. He did not apply to dispute the Notice to End Tenancy. He said at the hearing that he disagreed with the landlord's reasons for issuing the Notice but he did not dispute it because he is unfamiliar with the laws and rules relating to landlord and tenant matters. The Notice to End Tenancy required the tenant to move out of the rental unit by August 31, 2016.

The landlord's representative testified that the tenant requested additional time to move. On August 17th the landlord agreed to allow the tenant until September 30, 2016 to move, provided the tenant signed a mutual agreement to end tenancy. The tenant and his wife signed the form and agreed to move out by September 30, 2016.

The landlord's representative said that the tenant has refused to move and continues to occupy the rental unit. The tenant has made rent payments and the rent is paid in full for the month of November. The landlord's representative requested an order of possession effective November 30, 2016.

The tenant testified that he signed the mutual agreement: "under duress"; by that he meant that he felt he had no choice, but to sign because he has been unable to find alternative housing that is wheelchair accessible to accommodate his wife's disability and that will accept pets. The tenant said that he has received an offer from his former landlord to provide him with housing that will be ready in later December. He requested additional time to move out of the rental unit.

Analysis

The landlord's representative agreed at the hearing to allow the tenant to occupy the rental unit until December 31, 2016 provided rent is paid and provided the landlord has an order of possession effective December 31, 2106. The landlord's representative also requested recovery of the filing fee paid for the landlord's application.

The tenant acknowledged that he was served with the one month Notice to End Tenancy. The Notice to End Tenancy was in the proper form and complied with the requirements of section 52 of the *Residential Tenancy Act*. The tenant did not apply to dispute the Notice and pursuant to section 49(5) of the *Act*, he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The landlord has granted the tenant an extension of that time by mutual agreement and consented to a further extension until December 31, 2016 at the hearing provided the tenant pays December rent when due.

For the reasons stated, I grant the landlord an order of possession effective December 31, 2016 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

The landlord is entitled to recover the \$100.00 filing fee for this application and may retain the said sum from the security deposit that it holds, leaving a security deposit of \$150.00 and a pet deposit of \$200.00 to be dealt with at the end of the tenancy.

Conclusion

The landlord has been granted an order of possession and recovery of the filing fee for this application.

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: November 17, 2016

Residential Tenancy Branch