



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, MNR, MNS, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit. The notice of hearing was served on the tenant on December 14, 2016 by registered mail. The landlord provided a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent and to retain the security deposit?

Background and Evidence

The tenancy started on March 01, 2015. The monthly rent is \$1,234.00 due in advance on the first of each month. Prior to moving in, the tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00.

The landlord testified that she received multiple noise complaints from the other tenants of the building regarding the loud music, screaming and barking that emanates from the tenant's unit. The landlord filed copies of the complaints into evidence. On December 14, the landlord served the tenant with a notice to end tenancy for cause, by posting the notice on the tenant's door in the presence of a witness. The effective date of the notice is January 31, 2017. The tenant did not dispute the notice to end tenancy.

The landlord testified that the tenant indicated that she would not be paying rent for January 2017. The landlord testified that she was also given the impression that the tenant would not be moving out as per the end date of the tenancy. On December 30, 2016, the landlord made this application and included a claim for rent for January 2017.

The landlord testified that the tenant did not pay rent on January 01, 2017. The landlord is applying for a monetary order for rent in the amount of \$1,234.00 and for an order of possession effective the end date of tenancy as per the notice to end tenancy. The landlord is also applying for the recovery of the filing fee and to retain the deposits in satisfaction of her claim.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant is deemed to have received the notice to end tenancy on December 17, 2016 and did not make application, pursuant to Section 47 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective by 1:00pm on January 31, 2017. The Order may be filed in the Supreme Court for enforcement.

The landlord's application is dated December 30, 2016 while the effective date of the notice to end tenancy is January 31, 2017. I find that the landlord applied prematurely and therefore must bear the cost of filing her application. I find that the landlord is entitled to \$1,234.00 for unpaid rent. . I order that the landlord retain the security deposit of \$600.00 and the pet deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$34.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective by 1:00pm on January 31, 2017 and a monetary order in the amount of **\$34.00**.

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: January 25, 2017

Residential Tenancy Branch

