



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH AMERICAN VANSTAR INVESTMENTS LTD. & GAMMON
INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, MNDC, FF, CNR, OLC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “*Act*”).

The Landlord filed an Application requesting an order of possession based on unpaid rent; to recover unpaid rent and /or utilities; for compensation for damage to the unit; for compensation for damage or loss under the Act; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenant filed an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and for a monetary order for money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing the Tenant withdrew his request for a monetary order for money owed or compensation for damage or loss.

Issues to be Decided

- Did the Tenant dispute the 10 Day Notice within the required time period?
- Is the Landlord entitled to an order of possession
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
Is the Landlord entitled to retain the security deposit for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fees?

Background and Evidence

The Parties testified that the tenancy began on December 1, 2016, as a six month fixed term tenancy. Rent in the amount of \$1,500.00 is due on the first day of the month. The Tenant paid the Landlord a security deposit of \$750.00.

The Landlord testified that the Tenant failed to pay the rent that was due under the tenancy agreement for the months of May 2017, and June 2017.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 22, 2017, to the Tenant by posting the Notice to the Tenant's door on June 23, 2017. The Landlord provided a proof of service document to support the service of the Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice states that the Tenant has failed to pay rent in the amount of \$3,000.00 that was due on May 1, 2017.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice. The Landlord testified that the Tenant has not paid any amount of rent owing under the tenancy agreement for the months of May 2017; June 2017; July 2017; and August 2017. The Landlord testified that the Tenant owes \$6,000.00 in unpaid rent.

The Landlord is seeking an order of possession, a monetary order for unpaid rent and to retain the security deposit towards the unpaid rent.

The Tenant applied to dispute the 10 Day Notice on July 7, 2017.

The Tenant testified that he received the 10 Day Notice on June 23, 2017.

The Tenant testified that he did not pay the rent within 5 days of receiving the Notice and he has not paid the rent for the last four months. He testified that he has not been able to afford to pay the rent.

Analysis

Section 66 of the Act states that the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the Notice.

Based on the evidence before me, and the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not pay the outstanding rent within five days of receiving the Notice, and applied to dispute the Notice beyond the effective date of the Notice. The Tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The effective date of the Notice corrects to be July 3, 2017, which is 10 days after the Tenant received the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes \$6,000.00 for rent.

I order that the Landlord can keep the security deposit of \$750.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord filed two applications and paid two filing fees rather than amending the initial application. I find that the Landlord could have amended the initial application and it would be unfair to order the Tenant to pay the filing fee for both applications. I order the Tenant to pay \$100.00 of the fee that the Landlord paid to make applications for dispute resolution.

I find that the Landlord has established a total monetary claim of \$6,100.00 comprised of \$6,000.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$750.00, I grant the Landlord a monetary order in the amount of \$5,350.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant received a 10 Day Notice and failed to pay the rent owing under the tenancy agreement within 5 days of receiving the Notice.

The Landlord is granted an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant.

I grant the Landlord a monetary order in the amount of \$5,350.00 for unpaid rent and the filing fee for the hearing.

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: August 18, 2017

Residential Tenancy Branch