



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Commonwealth Holdings Co. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNC, FF

For the landlord – OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; For an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord's agents attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant attending confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This fixed term tenancy started on April 01, 2013 and is due to end on March 31, 2014. Rent for this unit is \$1,200.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$600.00 on March 22, 2013 and a pet deposit of \$600.00 on March 26, 2013. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord's agent testifies that the tenants failed to pay rent for June and July, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 06, 2013. This was served in person to the tenants on that date. This Notice states that the tenants owe rent for June, 2013 of \$1,225.00 which includes a \$25.00 NSF fee as the tenants rent cheque for June was dishonoured at the bank (NSF). The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 20, 2013. The tenants did not pay the outstanding rent and did not dispute this Notice. The landlord's agent testifies that the tenants gave the landlord a posted dated cheque for June and Julys rent on June 25, 2013. The cheque was dated July 01, 2013 however when this cheque was presented in the bank it was also dishonoured. The total amount of unpaid rent is now \$2,400.00.

The landlord testifies that the tenancy agreement contains information to which the tenant has signed to agree that the landlord will apply the sum of \$25.00 for each NSF rent cheque. The landlord therefore seeks to recover these NSF fees for June and Julys rent cheques of \$50.00. The landlord has provided a copy of the tenancy agreement and the evidence from the bank showing the dishonoured cheques.

The landlord has applied to retain the tenant's security and pet deposit of \$1,200.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant does not dispute the landlords claim for unpaid rent for June and July or the landlords claim for NSF fees. The tenant testifies that he only disputed the One Month Notice to End Tenancy as the tenant wanted an agreement to end the tenancy on July 31, 2013.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agents. The landlords have provided a copy of the tenancy agreement in documentary evidence. This agreement states that the tenant attending the hearing is the tenant and has been signed by that party while the other party named on the landlords application is an occupant in the rental unit. And has not signed the tenancy agreement. When there is only one named tenant on a tenancy agreement then any orders issued will be in the name of that tenant only. Occupants of a rental unit have no legal rights or obligations for a tenancy under the *Act*

Section 26 of the Act states: 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.

Consequently I find that the tenant has failed to pay rent for June and July, 2013 and the landlord is entitled to recover these rent arrears to the sum of **\$2,400.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposit of **\$1,200.00** in partial payment of the rent arrears.

The landlord also claimed a \$50.00 for two returned cheque charges relating to June and July, 2013. Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. Section 10 of the written tenancy agreement provided by the landlord as evidence, indicates that this fee can be charged and as a result I find that the landlord is entitled to recover these fees for two NSF cheques of **\$50.00**.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the balance owing as follows:

Outstanding rent	\$2,400.00
NSF fees	\$50.00
Less security and pet deposits	(-\$1,200.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,300.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on June 06, 2013. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

The landlord has also applied for an Order of Possession for cause. As this tenancy has been ended due to unpaid rent I am not required to hear the parties application concerning the reasons given on the One Month Notice.

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,300.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme 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: July 18, 2013

Residential Tenancy Branch

