



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARK ROYAL VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord served the tenant with a copy of the application and Notice of Hearing documents by registered mail. The landlord provided the Canada Post tracking receipt to prove this method of service. In the absence of any other evidence to contradict this, I find that the tenant was served the hearing documents as per the *Residential Tenancy Act* (the 'Act').

The landlord's agent attended the hearing and provided affirmed testimony. The landlord provided documentary evidence in advance of the hearing and was also permitted, under Section 11.5 of the Rules of Procedure, to provide a copy of the notice to end tenancy and the written tenancy agreement during the hearing.

There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

At the start of the hearing the landlord testified that the tenant had left on September 13, 2013 and as a result withdrew her application requesting an Order of Possession. The landlord also requested that she be allowed to keep the security deposit the tenant had paid at the start of the tenancy.

Issue(s) to be Decided

- Is the landlord entitled to a monetary claim for unpaid rent?
- Can the landlord keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy started on July 1, 2012 for a fixed term of one year which then went on to a month-to-month basis. A written tenancy agreement was completed, which was provided as evidence, and the tenant paid a security deposit of \$897.50 on June 12, 2013, which the landlord still retains. Rent in the amount of \$1,850.00 was payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant failed to pay rent for the month of April, 2013 leaving an outstanding balance of \$600.00. The tenant then failed to pay any of her rent for the months of May and July, 2013.

As a result, the landlord served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, on July 29, 2013 by posting it to the tenant's door with a witness. The notice, which was provided as evidence, shows an expected date of vacancy of August 9, 2013, due to \$3,686.00 of unpaid rent which was due on July 1, 2013. The landlord testified that the amount on the notice was incorrect as it had been calculated without having an up-to-date ledger.

The landlord's agent further testified that the tenant paid only \$1,200.00 for August, 2013 rent leaving an outstanding balance of \$650.00 the month of September, 2013. The tenant then failed to pay for September, 2013 rent and left the rental unit without giving any notice on September 13, 2013. The landlord testified that they did not have enough time to rent it out for the middle of the month and also seek outstanding rent for the entire month of September, 2013.

As a result, the landlord now seeks to claim a total of \$6,260.00 outstanding rent from the tenant. The tenant failed to attend the hearing or provide any written submissions prior to this hearing taking place to contradict any of the evidence provided by the landlord.

Analysis

Section 46(4) and (5) of the *Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents on the approved form complied with the requirements of the *Act*.

The tenant was served by the landlord with the notice to end tenancy on July 29, 2013, by posting it to the tenant's door. The *Act* states that documents served in this manner are deemed to have been received three days after such mailing. Therefore, I find that the tenant was deemed to be served on August 1, 2013, and had until August 6, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenant did.

As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the evidence of the landlord and the absence of any evidence from the tenant to dispute this, I am satisfied that the tenant failed to pay rent in the amount of \$6,260 and as a result, I find that the landlord is entitled to a Monetary Order in this amount.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$100.00 filing fee for the cost of this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$6,360.00.

As the landlord already holds \$897.50 as a security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$5,462.50.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$5,462.50**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: September 26, 2013

