



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on October 11, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;

The Landlord applied on October 18, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit – Section 38;
4. A Monetary Order for compensation – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on March 1, 2013. Rent of \$1,075.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$537.50 as a security deposit from the Tenant. The Tenant failed to pay rent for October 2013 and on October 4, 2013 the Landlord personally served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant does not dispute that the rent is unpaid and states that he is making arrangements for financial assistance and expects to be able to pay the rent for both October and November 2013 by October 27, 2013. The Tenant states that they have living with them their 3 children attending the nearby school and an 83 year old grandfather and hope to be able to pay the rent and stay. The Landlord indicates that there was an agreement for the rent to be paid by today's date to allow the tenancy to continue but that the Tenants has failed to make the payment. The Landlord claims unpaid rent and an order of possession.

Analysis

Section 46 of the Act requires that upon receipt of a 10 day notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Although the Tenant has disputed the Notice, there is no dispute that the rent has not been paid. I find therefore that the Notice is valid and that the Tenant is not entitled to a cancellation of the notice. I further find that the Landlord has substantiated an entitlement to **\$2,150.00** for unpaid October and November 2013 rent.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy and the notice is upheld, an order of possession of the rental unit must be granted to the landlord if, at the time scheduled for the hearing, the landlord requests an order of possession. As the Notice has been found valid and as the Landlord has requested an order of possession I find that the Landlord is entitled to an order of possession effective 1:00 p.m. November 30, 2013.

As the Landlord's application has been successful, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,200.00**. Deducting the security deposit of **\$537.50** plus zero interest leaves **\$1,662.50** owed by the Tenants to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. November 30, 2013.

I order that the Landlord retain the **deposit** and interest of \$537.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,662.50**. If necessary, this order may be filed in the Small Claims 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: November 21, 2013

Residential Tenancy Branch

