



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Glen Joint Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR; MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent DL gave affirmed testimony at the Hearing.

DL testified that she mailed the Notice of Hearing documents and copies of the Landlord's documentary evidence to the Respondents, by registered mail to the rental unit, on October 24, 2013. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence.

Based on the evidence provided, I am satisfied that the Landlord served both of the Respondents with the Notice of Hearing documents by registered mail pursuant to the provisions of Section 89(1)(c) of the Act. Section 90 of the Act deems service in this manner is deemed effective five days after mailing the documents.

The Landlord provided an additional package of documentary evidence to the Residential Tenancy Branch on November 21, 2013. DL was not certain if or when the additional package was served upon the Respondents, and therefore it was not considered during the Hearing.

Preliminary Matter

The Landlord provided a copy of the tenancy agreement, which was not signed by the Tenant KK. Therefore, I find that the Landlord did not provide sufficient evidence that the Respondent KK is a tenant under the tenancy agreement and the Landlord's application against the Respondent KK is dismissed without leave to reapply. The Hearing continued with respect to the Tenant JK only.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession and a monetary award for unpaid rent for the month of October, loss of revenue for the month of November and December, 2013, and late fees?
- May the Landlord apply the security deposit towards partial satisfaction of its monetary award?

Background and Evidence

Monthly rent is \$886.00, due on the first day of each month. The security deposit in the amount of \$425.00 was paid on June 22, 2007.

On October 3, 2013, the Landlord issued a Notice to End Tenancy for Unpaid Rent (the "Notice"). The Landlord served the Tenant KK with the Notice by posting it to the Tenant's door on October 3, 2013. The Tenant JK has not disputed the Notice.

The Landlord seeks a monetary award, calculated as follows:

| | |
|--|------------------|
| Outstanding rent and late fees (for September) as at October 3, 2013 | \$919.67 |
| Less payment made | -\$200.00 |
| Less payment made | <u>-\$450.00</u> |
| Subtotal | \$290.67 |
| Plus late fees for October, November and December, 2013 | \$75.00 |
| Plus loss of revenue for November, 2013 | \$886.00 |
| Plus loss of revenue for December, 2013 | <u>\$866.00</u> |
| TOTAL monetary award sought | \$2,137.67 |

DL testified that the Tenant JK remains in the rental unit.

Analysis

I accept that Landlord's evidence that the Notice was posted to the Tenant JK's door on October 3, 2013. Service in this manner is deemed to be effected 3 days after posting the document, in this case October 6, 2013.

I accept the evidence before me that the Tenant JK failed to pay the rent owed in full within the 5 days granted under Section 46 (4) of the Act.

Section 53 of the Act provides that an incorrect end-of-tenancy date on a notice to end tenancy is automatically corrected to the earliest date that complies with the Act. Based on the foregoing, I find that the Tenant JK is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on October 16, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession and a monetary award for unpaid rent and late fees up to the end of October, 2013, and loss of revenue for the month of November, 2013. I find that the Landlord's request for loss of revenue for the month of December is premature, as the Landlord may be able to re-rent the rental unit prior to the end of December. This portion of the Landlord's claim is dismissed with leave to reapply.

The Landlord seeks a monetary award for late fees for the months of October, November and December, 2013. There is a clause in the tenancy agreement that allows for late fees in the amount of \$25.00. The tenancy ended on October 16, 2013, and therefore I allow the Landlord's claim for late fees for late rent for the month of October, 2013. The Landlord's loss of revenue for the months of November and December, 2013, is not rent and therefore I dismiss this portion of the Landlord's claim.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and accrued interest towards partial satisfaction of the Landlord's monetary award. Interest in the amount of \$9.79 has accrued on the security deposit.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenant JK.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

| | |
|---|-------------------|
| Unpaid rent and late fees | \$315.67 |
| Loss of revenue for November, 2013 | \$886.00 |
| Recovery of the filing fee | <u>\$50.00</u> |
| Subtotal | \$1,251.67 |
| Less security deposit and accrued interest | <u>- \$434.79</u> |
| TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF | \$816.88 |

Conclusion

The Landlord's application against the Tenant KK is **dismissed without leave to reapply**.

The Landlord's application for loss of revenue for the month of December, 2013, is **dismissed with leave to reapply**.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenant JK. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$816.88** for service upon the Tenant JK. This Order may 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: December 06, 2013

Residential Tenancy Branch

