



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shapiro Holdings Ltd c/o Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

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

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in 1986. Rent of \$985.00 is payable in advance on the first day of each month. At the outset of the tenancy on February 1, 1986, the Landlord collected \$250.00 as a security deposit from the Tenant. The Tenant failed to pay rent for November 2013 and on November 14, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the

door. The Tenant has not made an application for dispute resolution and has not paid the arrears. The Tenant has not been seen in the unit since the end of November 2013 but has left a few items and did not return the keys to the unit. The Landlord claims unpaid rent for November and December 2013.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") 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. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on the Landlord's evidence I find that the Tenant was given a valid Notice, deemed to have been received on November 17, 2013. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Based on the Landlord's evidence I find that the Tenant moved out of the unit as required by the Notice and the Landlord therefore no longer requires an order of possession. I also find that the Landlord has substantiated an entitlement for unpaid November 2013 rent of **\$985.00**. As the Landlord ended the tenancy and the Tenant moved out as required by the Landlord's notice, I dismiss the Landlord's claim for unpaid December 2013 rent as the Tenant is no longer required to pay rent under the tenancy agreement.

The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$1,035.00**. Setting the security deposit of **\$250.00** plus **\$240.73** interest off the entitlement leaves **\$544.27** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$490.73 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$544.27**. 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: January 21, 2014

Residential Tenancy Branch

