



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord's agent, and the Tenant appeared at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord's agent provided a copy of the Residential Tenancy Agreement which was signed by the parties on July 26, 2010. The Tenants were required to pay rent of \$1,375.00 per month. This amount was reduced to \$1,175.00 in April 2011. On July 26, 2010 the Tenant paid a security deposit of \$687.50.

Based on the testimony of the Landlord's agent, and the evidence filed, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on July 7, 2014 by posting to the door (the "Notice"). The Tenant, J.L., testified that she received the notice on that same date and retrieved the notice shortly after the Landlord's agent posted the notice to the door.

The Landlord's agent indicated on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Proof of Service that the Tenant was served personally. As the Tenant, J.L., confirmed she retrieved the Notice from the door shortly after it was posted, it is not necessary to rely on the deeming provisions of section 90. That said, the posting of the Notice on the door is not personal service pursuant to section 89(2)(a) of the Act.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord's agent submitted a Tenant Ledger with the Application for Dispute Resolution and which indicated \$8,410.00 owing for rent only. The Landlord's agent testified that all late fees and N.S.F. fees had been waived or written off. The Tenant agreed that \$8,410.00 was owing to the Landlord for unpaid rent.

The Tenant, J.L., agreed that she and her fiancé (the other tenant) had moved from the rental unit as of August 10, 2014 and accepts the end of the tenancy. The Tenant, J.L. further testified that she continues to have possession of the keys to the rental unit and will need to attend the rental unit to retrieve some of her personal belongings. The Landlord's agent testified that she wished to perform a walk-through of the rental unit with the Tenants at which time the Tenants would retrieve their remaining belongings and return the rental unit key.

Analysis

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Tenant, J.L., agreed that she and her fiancé (the other tenant) had moved from the rental unit as of August 10, 2014 and accepts the end of the tenancy. The Tenant, J.L.

further testified that she continues to have possession of the keys to the rental unit and will need to attend the rental unit to retrieve some of her personal belongings. The Landlord's agent testified that she wished to perform a walk-through of the rental unit with the Tenants at which time the Tenants would retrieve their remaining belongings and return the rental unit key.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$8,410.00 comprised of \$8,410 for rent owing.

The Tenant agreed that the security deposit be applied to the amount owing for rent. Therefore I amend the Landlord's application, pursuant to section 64, and order that the Landlord retain the security deposit of \$687.50 in partial satisfaction of the claim. Accordingly, I grant the Landlord an order under section 67 for the balance due of \$7,722.50.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 19, 2014

Residential Tenancy Branch

