



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, mnsd, ff

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession and a Monetary Order for unpaid rent.

Both parties attended the hearing, and notwithstanding a problem with her mail box key, which has delayed her filing any evidence of a rebuttal nature, she acknowledges having received the landlord's application, and notice of this hearing.

Issues to Be Decided

- Is a mutual agreement to end this tenancy effective to end this tenancy and entitle the landlord to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent after the effective end date of the tenancy?
- If so, is the landlord entitled to retain the security deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The tenant moved into the subject premises February 26, 2015. At that time her monthly rent was \$1,100.00, and she paid a security deposit of \$550.00. Effective May, 2015, an agreement was made that her rent be reduced to \$1,000.00 per month. She experienced difficulties in paying all her rent as and when due, and fell into arrears. On September 1, 2015, she and the landlord signed a mutual agreement to end the tenancy, effective October 1, 2015. In consideration of the tenant entering this agreement, the landlord agreed to foregoing a claim as against the rental arrears owing. The tenant did not vacate the premises, and remains in possession. She has paid no rent since signing the mutual agreement. She acknowledged that when she signed the mutual agreement to end tenancy, she fully intended to vacate on October 1, 2015. She testified about several health and other personal problems that have developed, but agreed at the hearing that she could be moved out by February 8, 2015. The landlord requests an Order of Possession effective that date.

Analysis

Section 44(1)(c) of the Residential Tenancy Act confirms that a tenancy ends when a landlord and tenant agree in writing to end the tenancy. The tenant intended for the tenancy to end when she signed that agreement, and there is no question therefore, that this tenancy ended October 1, 2015. As that date has long passed, with no rent having been paid since, the landlord has established a right to possession pursuant to section 55(2)(d) of the Residential Tenancy Act. Accepting the submissions of the parties as to an appropriate end date, and given the tenant's unfortunate circumstances, I Order that the Tenant must vacate the premises by February 8, 2016.

The tenant has become an "overholding tenant", as defined in section 57(1) of the Residential Tenancy Act. Pursuant to section 57(3), the landlord is entitled to claim overholding rent from the tenant. The overholding period will exceed 4 months, and the landlord claims loss of rent for that 4 month period of \$4,000.00. This sum is awarded. The landlord also seeks recovery of the \$50.00 filing fee, and such recovery from the tenant is also appropriate and ordered in this case. The total sum awarded is \$4,050.00.

The landlord has applied for an order to retain the security deposit. The deposit totals \$550.00. As this sum is less than the award made, retention is appropriate.

Conclusion

Pursuant to Section 55(2)(d) of the Residential Tenancy Act, I issue an Order of Possession effective February 8, 2016. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I order pursuant to section 38(1) of the Residential Tenancy Act that the full amount of the security deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$3,500.00, be paid immediately by the tenant to the landlord.

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 25, 2016

Residential Tenancy Branch

