



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST COAST HOME REPAIR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord and the tenant, S.J. (tenant) attended the hearing via conference call and provided affirmed testimony. The tenant stated that the tenant, M.J. had recently passed away. The landlord confirmed the tenant's statement. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 19, 2016. The tenant confirmed receipt of the package as claimed by the landlord. I accept the undisputed affirmed evidence of both parties and find pursuant to section 90 of the Act that both parties have been sufficiently served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 15, 2002 on a fixed term tenancy until December 31, 2002 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed

tenancy agreement dated January 14, 2002. The monthly rent began as \$1,100.00 payable on the 1st day of each month. Both parties agreed that current rent is now \$1,200.00 each month. A security deposit of \$550.00 was paid.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,200.00.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated November 7, 2016 by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$1,200.00 that was due on November 1, 2016. The 10 Day Notice displays an effective end of tenancy date of November 12, 2016.

The tenant confirmed that no rent was paid for November 2016, but stated that since the 10 Day Notice was served, the tenant has paid December and January rent in full. The landlord stated that he was not aware of this, but that the owner deposits the post-dated cheques every month and is unable to dispute the tenant's claim. The landlord re-iterated that he was only seeking \$1,200.00 for November 2016 rent. The tenant stated that he was prepared to pay all of the rental arrears to the landlord within the next few days following the hearing.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for November 2016. The tenant admits that she did not pay November's rent, but that December 2016 and January 2017 rent was paid in full.

Residential Tenancy Branch Policy Guideline #11, Amendment and Withdrawal of Notices states in part,

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties...

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue.

In this case, both parties confirmed that November 2016 rent of \$1,200.00 was not paid. The tenant claims that his post-dated rent cheques for December 2016 and January 2017 were paid as the landlord/owner deposited those rent cheques. The landlord, V.C. was unable to comment on whether rent for December 2016 and January 2017 were paid, but stated that his only instructions were to seek the unpaid rent of \$1,200.00 for November 2016. Both parties confirmed that the tenant was still occupying the rental unit. The landlord stated that no notices of any kind were served to the tenant since the application was filed on November 18, 2016. I

find as such that the landlord in accepting rent beyond the effective date of the notice without giving notice of "use and occupancy only" to the tenant reinstated that tenancy. The landlord failed to notify the tenant that he would accept rent, but was still seeking an end to the tenancy. As such, the landlord's application for an order of possession is dismissed.

As for the monetary claim, I find based upon the undisputed affirmed testimony of the tenant that rent of \$1,200.00 for November 2016 was not paid. The landlord has established a claim for unpaid rent of \$1,200.00.

The landlord having only been partially successful in his application is only entitled to recovery of \$50.00 of the filing fee.

As the tenancy continues, I decline to make any order regarding the disposition of the security deposit.

Conclusion

The landlord's request for an order of possession is dismissed. The tenancy shall continue. The landlord is granted a monetary order for \$1,200.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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 04, 2017

Residential Tenancy Branch