



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkview Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OPR, OPC, MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant did not appear although he was personally served with the Application for Dispute Resolution and Notice of Hearing at the rental unit by the landlord's agent on December 2, 2016.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on July 1, 2009. The initial rent was \$1,200.00 due in advance on the first day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy. The rent was increased to \$1,240.00 per month commencing January 1, 2017. The tenant has been in arrears of his rent payments consistently for several years. The landlord provided a ledger showing the tenant's rent payments from September 2014 to date. The tenant has been served with several 10 day Notices to End Tenancy for unpaid rent. The tenant failed to pay rent for September, 2016 when it was due. The landlord's agent personally served the tenant with a 10 day Notice to End Tenancy dated September 7, 2016. The Notice stated that the tenant failed to pay rent in the amount of \$3,200.00, including arrears. The tenant did not make a rent payment within five days of receiving the Notice to End Tenancy and he did not file an application to dispute the Notice to End Tenancy. The tenant made a rent payment of \$1,800.00 on October 14, 2016, but he has made no payments since. The landlord served the tenant with a one month Notice to End Tenancy for repeated late payment of rent on October 27, 2016. The Notice to End Tenancy required the tenant to move out of the rental unit by November 30, 2016. The tenant has not applied to dispute this Notice and no rent has been paid for November, December or January. According to the landlord's

accounting records the amount of rent outstanding, inclusive of rent for January is the sum of \$6,240.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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, as in the present case, 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.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit – I accept that the landlord's accounts accurately state the payments by the tenant. I find that the landlord has established a total monetary claim of \$6,240.00 for the outstanding rent to and including rent for January. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$6,340.00. The tenant's deposit has not accrued any interest. I order that the landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,740.00. 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 11, 2017

Residential Tenancy Branch