Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes   OPRM-DR FFL

Introduction

The matter originally proceeded by way of an *ex parte* Direct Request Proceeding on April 26, 2018, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

On May 4, 2018, the tenants were granted their application for review consideration, and the Decision and Orders dated April 26, 2018 were suspended until today's Review Hearing. The tenants filed the application for review consideration on the grounds that the landlord had committed fraud by not serving the tenant with the 10 Day Notice, dated April 5, 2018, as stated in the Proof of Service provided by the landlord.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing
If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Issue(s) to be Decided

Should the Order of Possession and Orders granted on April 26, 2018 be confirmed?
Background and Evidence

This tenancy began on January 1, 2017, with monthly rent currently set at $1,404.00. The landlord included a copy of the tenancy agreement in their evidence, as well as a Notice of Rent Increase effective February 1, 2018. The landlord collected a security deposit and pet damage deposit in the amounts of $650.00 each deposit.

The landlord issued a 10 Day Notice to End Tenancy on April 5, 2018 for the tenant's failure to pay $1,400.00 in outstanding rent. The landlord included a copy of this 10 Day Notice, as well as a Proof of Service which states that the tenant was served the 10 Day Notice by way of posting on the tenant's door on April 5, 2018.

The landlord applied for an Order of Possession as well as the Monetary Order for unpaid rent and to recover the filing fee, and was granted the Order of Possession and Monetary Order on April 26, 2018.

The tenants filed their application for review consideration on the grounds of fraud as they submitted that they were not served with the 10 Day Notice to End Tenancy by the landlord. The application was granted, and the decision and order were suspended pending the decision from this Review Hearing.

Analysis

I have considered the undisputed testimony of the landlord in today's review hearing, as well as the evidence that was submitted by the landlord.

I find that the tenants were obligated to pay the monthly rent in the amount of $1,404.00 as per the tenancy agreement and section 26 of the *Act*.

I find that that the tenants were served, in accordance with sections 88 and 90 of the *Act*, with the 10 Day Notice on April 8, 2018, three days after posting. I find the 10 Day Notice dated April 5, 2018 to be valid.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

I, therefore, confirm the decision and orders issued on April 26, 2018.

Conclusion

The decisions and orders issued on April 26, 2018 are confirmed.

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: July 3, 2018

Residential Tenancy Branch