



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened as a result of the tenant's successful application for review regarding the Decision dated February 26, 2013, in which the landlord was granted an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent based upon her application for dispute resolution under the direct request process.

The tenant applied for a review based upon her contention that she had evidence that the Decision of February 26, 2013, was obtained by fraud.

The tenant was granted a review hearing in a Decision by another Arbitrator dated March 12, 2013, and the Decision of February 26, 2013 was suspended pending the review hearing.

This review hearing dealt with the landlord's original application seeking a monetary order for unpaid rent and an order of possession for the rental unit due to unpaid rent.

At the review hearing the parties appeared and the hearing process was explained.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matters-It must be noted that the parties were additionally in dispute resolution on the cross applications of the parties, with the landlord applying for a

monetary order for unpaid rent and the tenant applying for an order granting more time to make an application to cancel a notice to end tenancy, to dispute an additional rent increase, and to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") for Unpaid Rent which was the subject of the landlord's original application for dispute resolution under the direct request process.

The hearing on the cross applications was conducted on March 18, 2013, and a Decision was issued on March 19, 2013, stating that the landlord withdrew her application. Additionally that Arbitrator stated that as the tenant applied to cancel the Notice outside the allowable time frame and beyond the effective date of the Notice, the tenant would need to rely upon her request for review consideration as an extension of time to dispute the Notice.

It must also be noted that the Review Consideration Decision of March 12, 2013, in which the tenant was granted a review hearing, the tenant was ordered to serve the landlord with the notices of the time and date of the review hearing, the review decision, and the evidence the tenant relied upon in her application for review within 3 days of the receipt of the Decision.

The landlord said she did not receive the tenant's application or the evidence submitted with her application for review, and received the notice of hearing letter on April 4, 2013.

The tenant did not disagree.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent?

Background and Evidence

The landlord's evidence as to the details of this tenancy were that the parties entered into an original fixed term, starting on December 1, 2009, and ending on November 11, 2010, for a monthly rent of \$500.00, due on the first day of the month. No security deposit was paid, according to the tenancy agreement entered into evidence.

The landlord also submitted a tenancy agreement showing that the parties entered into a subsequent fixed term tenancy, starting January 1, 2011, and ending December 31, 2012, for a monthly rent of \$775.00. This tenancy agreement listed no due date for the

monthly rent in the body of the contract; however an addendum to the tenancy agreement shows that monthly rent is due on the 15th day of the month.

The landlord explained that as to the monthly rent, the tenant was to pay \$500.00 and the tenant was allotted \$275.00 for "value received," which was for work performed on renovations to the rental unit as contained in the addendum.

The landlord also pointed out that pursuant to the tenancy agreement, beginning in January 2013, the rent was to increase to \$800.00 per month, on a month to month basis.

The landlord gave evidence that on February 4, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$1000.00 as of February 1, 2013. The effective vacancy date listed on the Notice was February 15, 2013.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") in dispute of the Notice.

In explanation of the amount listed on the Notice, the landlord said that as the renovation work was not being performed by the tenant, she was no longer entitled to the rent allowance of \$275.00, and that the tenant should pay the full amount listed on the tenancy agreement. The landlord acknowledged that she has since become aware that she was not entitled to increase the rent to \$800.00 by the terms listed in the tenancy agreement and that the monthly rent was to be \$775.00 as originally stated.

The landlord said that the tenant paid \$500.00 on January 4, 2013, leaving a balance of \$300.00; on February 4th, the tenant paid \$400.00; in March the tenant paid \$500.00; in April the tenant has not paid rent.

The landlord also said that she gave the tenant a rent credit of \$100.00 for laminate flooring.

In response, the tenant gave evidence that rent was due on the 15th day of the month, as stated in the addendum, as the date in the tenancy agreement was left blank.

The tenant further contended that she only owed \$500.00 per month, as she stood ready and willing to do the renovation work when the owner supplied the materials as promised. The tenant said this arrangement has been ongoing for 3 years.

The tenant submitted that the delivery of the Notice was fraudulent as the landlord used an unwitting acquaintance in delivery of the Notice; however, the tenant acknowledged receiving the Notice on February 4, 2013.

The tenant further contended that as rent was due on the 15th day of each month, she did not owe the amount listed on the Notice; however, the tenant acknowledged that she did not pay the rent listed on the Notice or file an application for dispute resolution disputing the Notice within 5 days, which in this case would be February 9, 2013. The tenant did file an application for dispute resolution, on February 20, 2013.

The tenant defended this delay by saying that the landlord has issued so many other notices and did nothing, that she saw no reason that this Notice would be any different.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

The landlord provided undisputed evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on February 4, 2013, listing unpaid rent of \$1000.00 as of February 1, 2013.

The tenant agreed that she neither paid the unpaid rent listed or applied to dispute the Notice within five days of receiving it.

Therefore under section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate by the effective move out date listed on the Notice.

I therefore find that the landlord has proven that she is entitled to an order of possession for the rental unit.

As to the landlord's request for a monetary order for \$1000.00, when making a claim for damages or compensation pursuant to the tenancy agreement, the Act or the Regulations, the party making the allegations has the burden of proving their claim. Proving such claim requires that it be established that the damage or loss occurred, that

the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to minimize their loss.

In the case before me, I find the landlord submitted insufficient evidence that she is entitled to the amount requested in her application, \$1000.00. In reaching this conclusion, I considered that part of the rent to be paid was for services rendered, or to be rendered by the tenant. Additionally, the landlord gave credit to the tenant for laminate flooring, the landlord attempted to start collecting for an increased amount other than the \$500.00 the tenant had traditionally paid throughout the tenancy, and the landlord failed to provide tenant ledger sheets or other accounting records.

In this dispute resolution hearing, I find I am unable to resolve the issue for the landlord as to whether the services were rendered, or completed, and in a satisfactory manner. The tenant disputed that she was able to start the work as the owner failed to provide the materials and I am not able to determine otherwise. Had these issues been brought before the Residential Tenancy Branch ("RTB") for dispute resolution by either party earlier seeking a resolution or clarification to the part of the tenancy agreement regarding services rendered, the matter could have been resolved for consideration in this dispute.

As the landlord submitted confusing and inconsistent evidence regarding the amount of unpaid rent, I find the landlord has not met her burden of proof and is not entitled to a monetary order for unpaid rent.

Conclusion

As I have found that the landlord is entitled to an order of possession for the rental unit, I therefore confirm that portion of the Decision of February 26, 2013, granting the landlord an order of possession for the rental unit, and that the said order of possession for the rental unit is reinstated, and remains valid and enforceable.

The costs of such enforcement are subject to recovery from the tenant.

As I have found that the landlord is not entitled to a monetary order, I set aside that portion of the February 26, 2013, Decision finding that the landlord is entitled to monetary compensation of \$950.00. The monetary order issued on February 26, 2013, in favour of the landlord is of no force or effect.

As such, the landlord's monetary claim for \$1000.00 is dismissed, without leave to reapply.

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* and is being mailed to both the applicant and the respondent.

Dated: April 12, 2013

Residential Tenancy Branch