



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, MNDC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy and a monetary order and a cross-application by the landlord for an order of possession, a monetary order and an order authorizing them to retain the security and pet deposits in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notices to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on December 15, 2012 and that the tenant paid a \$375.00 security deposit and a \$200.00 pet deposit at that time.

The tenant claimed that shortly after her tenancy began, she paid an additional \$200.00 pet deposit in cash to the then property manager. The landlord testified that they have no record of such a payment and that they do not have cash payments.

The tenant claimed that her rent was set at \$688.00 per month while the landlord claimed that the rent was set at \$750.00 per month. The tenancy agreement states that rent is \$750.00 per month. The tenant referred to the landlord's evidence of rent payment and stated that because she paid \$688.00 per month during the first year of her tenancy, this proves that she was not required to pay more. She claimed to have signed the tenancy agreement stating a different amount only because the landlord said she had to sign the agreement in order to begin her tenancy and he refused to give her back her deposit. The landlord testified that the tenant was given a rental incentive of

one month free rent, prorated over a 12 month period, which resulted in the tenant being given a \$62.00 discount each month. The landlord provided a copy of a letter sent to the tenant 2 months before her tenancy ended in which the landlord offered a further month free if the tenant would sign another 12 month fixed term lease. The landlord testified that the tenant chose not to sign the fixed term lease so her rent reverted back to \$750.00 per month as of January 1, 2014.

The landlord claimed that the tenant failed to pay rent in the month of August. The tenant testified that she purchased a Canada Post money order on July 29 which was for \$750.00 and made payable to the landlord. The tenant testified that she placed the money order in the mail slot on the office door, which was a means by which she had made previous rental payments. The landlord denied having received the money order. The tenant claimed that had a witness with her when she placed the envelope through the mail slot, but although the witness was willing to testify on her behalf, the tenant wished to protect the witness as she felt that the witness's tenancy would be jeopardized if she testified against the landlord.

The tenant claimed that she paid rent for September and October by putting personal cheques through the mail slot on the office door again in the presence of a witness who she wished to protect. The landlord denied having received these cheques.

The tenant theorized that the landlord wanted to end her tenancy because she had assisted other tenants who were being wrongfully evicted and was holding the money order and cheques until her eviction was complete, after which time the tenant suspected the landlord would cash the cheques.

The parties agreed that on August 5, the tenant was served with a 10 notice to end tenancy for unpaid rent (the "Rent Notice").

The parties further agreed that on July 31, the tenant was served with a 1 month notice to end tenancy for cause (the "Cause Notice").

The tenant seeks to have both the Rent Notice and the Cause Notice set aside and also seeks a monetary order for an illegal rent increase. She argued that after her first year of tenancy, the landlord illegally increased the rent from \$688.00 to \$750.00 per month.

The landlord seeks an order of possession, a monetary order for 3 months of unpaid rent and 3 months of late payment fees pursuant to the terms of the tenancy agreement. The landlord also seeks to recover the \$50.00 filing fee paid to bring their application.

Analysis

Although the tenant claimed to have paid a total of \$400.00 in pet deposits, the landlord only acknowledged having received \$200.00. The tenant provided no evidence to corroborate her claim that she paid an additional \$200.00 and I find that she has not proven this additional payment. I find that the landlord holds a \$375.00 security deposit and a \$200.00 pet deposit.

I find that the tenant agreed to pay rent at a rate of \$750.00 per month and that the only reason she paid \$688.00 per month for the first year of her tenancy is because the landlord gave her one month of free rent prorated over the year. I have arrived at this conclusion because all of the documentary evidence supports this scenario. The tenant paid a \$375.00 security deposit which is exactly one half of \$750.00, she was offered a further rental incentive shortly before the end of her first year of tenancy which only makes sense if she had received a previous rental incentive, she paid the \$750.00 per month apparently without complaint from January 2014 onward and she herself referred to her rental incentive during the hearing. I find that there has been no illegal rent increase and therefore I dismiss the tenant's monetary claim.

When a landlord claims that a tenant has failed to pay rent, the burden shifts to the tenant to prove that rent has indeed been paid. While the tenant provided a copy of a postal money order made out to the landlord, she did not provide evidence to corroborate her claim that she placed that money order into the mail slot in the landlord's office even though apparently there is a witness who can testify to this event. I do not accept the tenant's theory that the landlord is conspiring to evict her by withholding the rent as there is no objective evidence to support this claim. I am unable to find on the balance of probabilities that the tenant delivered the rent to the landlord and for that reason, I find that the tenant failed to pay rent in August and that the landlord has a valid reason to end the tenancy. I dismiss the tenant's claim for an order setting aside the Rent Notice and I grant the landlord an order of possession.

As the tenancy has ended pursuant to the Rent Notice, it is unnecessary for me to address the Cause Notice.

As I have found that the tenant failed to pay rent for August, I find that the landlord is entitled to recover those arrears from the tenant and I award the landlord \$750.00.

Again, although the tenant claimed to have paid rent for September and October by placing personal cheques through the mail slot on the landlord's office door, she provided no evidence to collaborate this claim. I find that the tenant has failed to pay occupational rent for September and October. I find that the landlord has lost income

for September and will likely be unable to re-rent the unit for October and I find that the tenant should be liable for those losses. I award the landlord \$750.00 for each of the months of September and October.

The landlord claims \$25.00 in late payment fees for August – October inclusive. I find that the landlord is entitled to a late payment fee for August and I award them \$25.00. Because the tenancy ended pursuant to the Rent Notice, the tenant was not legally obligated to pay late fees in the months of September and October and I therefore dismiss the claims for late fees for those months.

As the landlord has been substantially successful in their claim I find they should recover the \$50.00 filing fee paid to bring their application.

Conclusion

The tenant's claim is dismissed in its entirety. The landlord is granted an order of possession which must be served on the tenant and may be filed in the Supreme Court for enforcement. The landlord has been awarded a total of \$2,300.00 which represents rent for August, loss of income for September and October, August's late payment fee and the filing fee. I order the landlord to retain the \$375.00 security deposit and the \$20.00 pet deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$1,7250.00. This 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: October 08, 2014

Residential Tenancy Branch

