



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, FF

For the landlord – OPR, OPC, OPL, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for Cause; for an Order of Possession for landlord's Use of the Property; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord was represented by her Lawyer and had two witnesses, of which only one was called to give testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the One Month Notice to End Tenancy for cause?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to An Order of Possession for landlord's use of the property?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2007 for a fixed term of one year. A new tenancy agreement was signed by the parties for a tenancy starting on August 01, 2008 for a five year fixed term with an option of continuing for a further two years on a month to month basis. Rent for this unit is \$1,700.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$725.00 on January 13, 2006.

The landlord's Lawyer asked the landlord when she last received rent from the tenant. The landlord testified in August, 2015. The landlord's Lawyer asked the landlord if she has received rent for September, October or November, 2015. The landlord testified no.

The landlord's Lawyer stated that the tenant was served with a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) by registered mail on September 04, 2015. A copy of the Notice has been provided in documentary evidence and indicates that the tenant owed rent of \$1,700.00 which was due on September 01, 2015. The

Notice informed the tenant that he had five days to either pay the outstanding rent or dispute the Notice. No rent has been received by the tenant since the Notice was served. The landlord's Lawyer stated that to date the tenant owes rent of \$5,100.00.

The landlord seeks an Order to be permitted to keep the security deposit of \$725.00 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance and to recover the \$100.00 filing fee paid for this application. The landlord's Lawyer confirmed that there is no further monetary amount sought for money owed or compensation for damage or loss.

The tenant agreed he had not paid the rent to the landlord for September, October or November, 2015. The tenant testified that he had mitigating circumstances to withhold the rent. The tenant testified that although he is the tenant of this unit he was allowed to sublet it to two other tenants and has not lived in the unit for many years. The tenant testified that rent has been late many times over the years as his tenants do not always pay rent on the first of each month and the landlord has never had an issue with this practise until recently.

The tenant testified that the landlord had served the tenant with a One Month Notice to End Tenancy because rent is repeatedly late and the tenant withheld rent for September and October because of this as the landlord was going to evict the tenants. The tenant also referred to the addendum to the tenancy agreement in which it states about improvements being made by the renter and the owners agreed to loan the renter money for the sole purpose of providing for improvements and upgrades in the condo unit. The tenant testified that he has put in new appliances which belong to him and has spent \$12,000.00 in upgrades to the unit. The tenant testified that he was hoping to reach a compromise with the landlord regarding these upgrades and appliances and so withheld the rent for September and October.

The tenant testified that November's rent was withheld as the landlord has also served a Two Month Notice to End Tenancy in September, 2015. As that Notice was effective

on November 30, 2015 the tenant gets the last month rent for free in compensation for the Two Month Notice. The tenant testified that therefore his tenants did not pay rent for November, 2015. Furthermore the landlord had informed the tenant by email that she had no plans to sell the unit yet went ahead and sold it.

The landlord's lawyer stated that the landlord's position is that the 10 Day Notice came before the Two Month Notice. Had an earlier hearing date been scheduled then the landlord would not have had to have issued a Two Month Notice to the tenant when the unit was sold. Consequently, the landlord's position is that the tenant has remained in possession of the rental unit without paying rent for the last three months.

The landlord's lawyer stated that with regard to the improvements made to the rental unit; the addendum contained a clause about improvements to the condo and the tenant was responsible for the costs of improvements as the landlord had agreed not to raise the rent in seven years, the tenant had access to the landlord's line of credit at a low rate and the tenant was able to sublet the unit and collected \$400.00 more a month in rent which over the period of four years equal to nearly \$20,000. The landlord agreed the tenant can remove his appliances only and the unit must be left as it was when the tenant moved in with regard to appliances.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was sent by registered mail it is deemed served five days later on September 09, 2015. The effective date of the Notice is amended to September 19, 2015 pursuant to s. 53 of the *Act*.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me to show the tenant has a right under the *Act* to deduct any rent. The tenant had the opportunity to file an application or amend his existing application to cancel the 10 Day Notice to End Tenancy and failed to do so. Consequently, as there is outstanding rent for September which was not paid within five days of the Notice being issued I intend only to deal with the 10 Day Notice to End Tenancy for unpaid rent. The Two Month Notice therefore has no effect as the tenancy will end in accordance with the 10 Day Notice and there is no compensation awarded under the *Act* for a 10 Day Notice.

I am satisfied therefore that the tenant has failed to pay rent for September, October and November, 2015 to an amount of **\$5,100.00** and the landlord is entitled to recover this amount from the tenant pursuant to s. 67 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*. The landlord agreed to extend the date the tenant's subtenants may vacate the rental unit to November 30, 2015 and the tenant must provide vacant possession of the rental unit by 1.00 p.m. on this date.

I Order the landlord to retain the security deposit of \$725.00 and accrued interest of \$25.53 pursuant to s. 38(4)(b) of the *Act*. The amount of **\$750.53** has been offset against the unpaid rent.

I further find as the landlord's application has merit the landlord is entitled to recover the **\$100.00** filing fee from the tenant. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for September, October and November	\$5,100.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$750.53)
Total amount due to the landlord	\$4,449.47

As this tenancy will be ending pursuant to s. 46 and 55 of the *Act* I am not required to deal with the One Month Notice to End Tenancy for Cause or the Two Month Notice to End Tenancy for Landlords Use of the Property.

As this tenancy has been ended due to the 10 day Notice; the tenant's application to cancel the One Month Notice has no bearing on the outcome of this hearing and is dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,449.47** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, the Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective at 1.00 p.m. on November 30, 2015 This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety 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*.

Dated: November 09, 2015

Residential Tenancy Branch

