



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avaun Properties INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant's agent.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 19, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The parties confirmed that the landlord had changed the front entry locks and that the tenant did not have a key to access the front door. As such, the tenant's agent submitted that the tenant could not access her mailbox.

The landlord's agent testified that all tenants were informed that the front locks would be changed and the tenant never attempted to contact the landlord for keys. The tenant's agent testified that the landlord refused to return the tenant's calls or answer the door when she attended the residential property. However, the tenant's agent also testified that he had gained access to the tenant's mailbox at one point and collected over 20 pieces of mail; he did not specify when he gained this access or how.

In addition, the tenant had applied for dispute resolution herself to deal specifically with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent that was issued in response to the tenant's failure to pay rent for the month of September. I find it unreasonable that the tenant would not be aware that the landlord would be pursuing to end the tenancy or seeking a monetary claim against the tenant.

Despite the tenant's agent's testimony that he personally witnessed the landlord gaining access to the tenant's rental unit without the tenant's consent, I find that he has provided no testimony or evidence that he had any direct knowledge of any attempts on

the part of the tenant to obtain a key to the front doors of the residential property, as such I prefer the landlord's agent testimony of the opportunities for the tenant to obtain a new key, specifically that the tenant did not attempt to obtain one.

Based on the testimony of both parties, I find that the landlord served the tenant in accordance with the requirements under Section 89 with a copy of his Application and evidence. Further and in conjunction with the fact the tenant filed her Application for Dispute Resolution seeking to cancel the 10 Day Notice for Unpaid Rent, I find, pursuant to Section 71(2)(b), that these documents have been sufficiently served for the purposes of this proceeding and the tenant was prepared to deal with the issues related to this dispute.

In addition, the parties agreed that at some time in September 2015 the tenant moved out of the rental unit into a shelter and has not paid any rent to the landlord since. The tenant's agent could not confirm specifically when the tenant vacated the rental unit but he stated he believed it was after September 15, 2015. As such, the tenant's agent indicated that the tenant no longer wished to pursue cancelling the 10 Day Notice she only wanted her personal belongings returned to her.

In light of the fact that the parties agree the tenant has vacated the rental unit I accept an amendment of the tenant's Application to include a request for an order to have the landlord return her personal belongings. I also find that the requirement for an order of possession is moot and I amend the landlord's Application to exclude the matter of possession.

Finally, the landlord also originally sought to pursue unpaid rent for the months of October and November 2015 but agreed in the hearing to withdraw that portion of his claim. I have amended his Application accordingly.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*

It must also be decided if the tenant is entitled to an order to require the landlord to return her personal property, pursuant to Section 65 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties in April 2014 for a 1 year and 1 day fixed term tenancy beginning on May 1, 2014 that was to convert to a month to month tenancy on May 2, 2015 for the monthly rent of \$795.00. However the year has been changed for the end of the fixed term to May 1, 2016 – there are no initials from either the landlord or the tenant on this change.

The landlord did submit an additional document that is entitled: "Residential Tenancy Agreement August 8, 2016 Addendum" confirming all of the original terms of the original tenancy agreement but then outlines some terms that were not included in the original tenancy agreement. These new terms include that the "rental contract will only continue for one year ending May 01/2016" and "no items will be placed in the hallway of unit 4: This is an addition to the existing terms." This document is signed by both parties.

The original tenancy agreement includes a term that requires the tenant to pay electricity to the city.

Both parties submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on September 9, 2015 with an effective vacancy date of September 19, 2015 due to \$795.00 in unpaid rent due on September 1, 2015 and failure of the tenant to pay utilities in the amount of \$250.00 following a written demand on September 1, 2015.

The parties agreed that the tenant had not paid any rent to the landlord for the month of September.

The landlord testified that the city had turned off the rental unit's hydro because the hydro bills had not been paid. The landlord did not provide a copy of a hydro bill or any other evidence to confirm any amount of utilities was owed by the tenant.

The landlord submitted that the tenant's sister and a "ministry" representative had attended the rental unit and removed the tenant's daughter's belongings but that there were still some of the tenant's possessions left behind and that the tenant is welcome any time to come and pick up these items. The tenant's agent stated that an attempt to retrieve the tenant's belongings was made on October 18, 2015 but that the landlord refused.

Analysis

Based on the agreement of both parties I accept the tenant failed to pay rent for the month of September 2015 and as such, I find the landlord is entitled to a monetary order for this unpaid rent.

In the absence of any evidence to confirm any hydro debt, I dismiss the portion of the landlord's claim for any utility costs.

I find, on the basis of the testimony of both parties, that the tenant has left personal belongings at the residential property and that the landlord has stored these belongings. As a result, I order the landlord to return these belongings to the tenant at the tenant's earliest convenience. I order that should the landlord fail to comply with this order the tenant may file a separate Application for Dispute Resolution for compensation for her belongings.

However, I also order that if the tenant fails to contact the landlord to arrange for the return of these items within 30 days of receipt of this decision, the landlord may consider them abandoned and dispose of them in accordance with Part 5 of the Residential Tenancy Regulation.

Conclusion

Based on the above, I grant the landlord a monetary order pursuant to Section 67 and grant a monetary order in the amount of **\$845.00** comprised of \$795.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 05, 2015

Residential Tenancy Branch

