



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on October 15, 2015. The Landlord filed seeking an Order of Possession for unpaid rent; possession based on a Mutual Agreement to end tenancy; a Monetary Order for unpaid rent; to keep the security deposit; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent (the Agent), and the Tenant. Each person gave affirmed testimony and the Tenant submitted her witness's name and stated he was currently in another room. The Tenant did not call her witness to present testimony during this hearing despite my asking if she had anything further to submit. I also asked the Tenant if she had any questions prior to my ending the hearing and she made no mention of her witness at that time.

The Agent presented the Landlord's evidence while conversing with the Landlord in the background. Therefore, for the remainder of this decision, terms or references to submissions on behalf of the Landlord shall include the Agent's testimony and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On October 15, 2015 the Landlord submitted 2 pages of evidence to the Residential Tenancy Branch (RTB) along with her application for Dispute Resolution. The Tenant affirmed that she received the Landlord's application and evidence package. No issues were raised regarding receipt of those documents. As such, I accepted the Landlord's documents as evidence for these proceedings.

No evidence was received at the RTB from the Tenant in response to the Landlord's application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to possession of the rental unit?
2. Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written fixed term tenancy agreement that began on September 1, 2015 and was scheduled to end on February 28, 2016. Rent of \$1,380.00 was payable on the first of each month and on September 1, 2015 the Tenant paid \$690.00 as the security deposit.

The Landlord testified that when the Tenant paid the partial amount of \$1,080.00 for the October 1, 2015 rent the Tenant told the Landlord she wanted to agree to end the tenancy. On October 7, 2015 the parties met and signed the mutual agreement to end the tenancy effective October 15, 2015.

The Landlord submitted that when she met with the Tenant on October 7, 2015 to sign the mutual agreement she personally served the Tenant with the 10 Day Notice to end tenancy, as provided in evidence. The Landlord asserted that they entered into an agreement that the Landlord would return \$390.00 to the Tenant from the \$1,080.00 paid for October 2015. The Landlord would keep the remaining \$690.00 as payment for half of the month's rent for October on the condition that the Tenant vacate the rental unit by October 15, 2015, in accordance with the mutual agreement. The Tenant did not vacate the unit and the Landlord filed her application for Dispute Resolution on October 15, 2015.

The Landlord argued that the building manager contacted her with concerns about the rental unit as the Tenant was not seen to be occupying the unit. The Landlord attended the RTB for assistance and was told to post a notice of entry and inspect the unit. The Landlord submitted that she and the building manager posted the notice and entered three days later to find the rental unit without power and in a state that appeared that no one was living in the unit. They submitted that there were some articles of furniture and bags of garbage in the rental unit which appeared to be discarded by the Tenant. When they did not hear from the Tenant they changed the locks on December 8, 2015.

The Tenant testified and initially stated she was not served a copy of the 10 Day Notice. She confirmed signing the mutual agreement and receiving \$390.00 back from the Landlord. During her testimony the Tenant changed her submission to say she was given several papers including the 10 Day Notice, the Mutual Agreement, and other papers from the Landlord. She began to argue that the hydro was not supposed to be changed into her name until October 2015. Then she stated it was the building manager and Landlord who cancelled the hydro forcing her to leave the rental unit.

The Tenant confirmed that no rent had been paid after October 15, 2015. She stated that she would be willing to have her security deposit used to pay any outstanding rent if the Landlord would agree for her to have access to her possessions. She argued that she attempted to contact the Landlord via telephone and that she was not able to speak to the Landlord until December 15, 2015, the day before this hearing.

The Landlord submitted that the Tenant made no attempt to contact her until yesterday, December 15, 2015. She argued it was that lack of contact from the Tenant which caused her to seek further instruction from the RTB on how she was to proceed in protecting the rental unit.

Prior to the conclusion of this hearing the parties mutually agreed to meet at the rental unit on Saturday December 20, 2015 at 2:00 p.m. so the Tenant could retrieve her personal possessions. The parties exchanged phone numbers and agreed to communicate with the other about the aforementioned meeting.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I favored the Landlord's evidence over the Tenant's evidence because the Landlord's submissions were forthright, credible, and supported by documentary evidence. I do not believe the Tenant's submission that she was not served the 10 Day Notice or that the hydro was not supposed to be placed into her name until October 2015 because as the Tenant continued to speak and present her submissions she contradicted her previous statements, as indicated above. I found that those contradictions lessened the Tenant's credibility, given the circumstances presented to me during the hearing.

It was undisputed that the parties entered into a mutual agreement to end the tenancy effective October 15, 2015 and the Tenant continued to either reside in the rental unit or leave her possession in the unit after October 15, 2015.

In addition, I accept the Tenant received the 10 Day Notice on October 7, 2015. Therefore, the effective date of the 10 Day Notice would have been October 17, 2015, two days after the effective date of the mutual agreement to end tenancy.

Section 44(1)(c) of the *Act* stipulates that tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Section 55(2)(d) of the *Act* provides, in part, that a landlord may request an order of possession of a rental unit by making an application for dispute resolution if the landlord and tenant have agreed in writing that the tenancy is ended.

Based on the above, I conclude that the issuance of the 10 Day Notice did not amend or withdraw the mutual agreement to end the tenancy. Therefore, I find this tenancy ended

October 15, 2015 in accordance with the mutual agreement to end tenancy, pursuant to section 44(1)(c) of the *Act*. Accordingly, I grant the Landlord's application and issue an Order of Possession, pursuant to section 55 of the *Act*.

Residential Tenancy Policy Guideline 3 stipulates that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent. I agree with this policy guideline.

Part 5 section 24(1) of the Regulations stipulates as follows:

- 24 (1)** A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.

[Reproduced as written]

In this case the Tenant remained in possession of the rental unit after October 15, 2015, leaving her possessions inside the rental unit even though she was not residing in the unit. The Landlord inspected the rental unit and found that the hydro had been turned off and food was rotting in the fridge. I accept the Landlord's submissions that she had not heard from the Tenant so she changed the locks on December 8, 2015 in order to protect her property.

After consideration of the foregoing, I find the Tenant's possessions were abandoned, pursuant to section 24(1) of the Regulations. I make this finding in part because no rent and no payments for use and occupancy had been paid by the Tenant for the period of October 16, 2015 to December 8, 2015, which is the date the Landlord changed the locks.

As noted above this tenancy ended **October 15, 2015**, in accordance with the mutual agreement to end tenancy. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for the period after October 16, 2015.

The undisputed evidence was the Landlord changed the locks to the rental unit on December 8, 2015, restricting the Tenant's access to the unit from that date. Therefore, I limit the monetary award to the period from October 16, 2015 to December 8, 2015.

Accordingly, I grant the Landlord compensation for use and occupancy and any loss of rent at a daily rate of \$45.37 for the 54 day period in the amount of **\$2,449.98**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use & Occupancy & Loss of Rent	\$2,449.98
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,499.98
LESS: Security Deposit \$690.00 + Interest 0.00	<u>-690.00</u>
Offset amount due to the Landlord	<u>\$1,809.98</u>

Conclusion

The Landlord was successful with their application and was granted an Order of Possession and monetary compensation of \$2,499.98. The monetary compensation was offset against the Tenant's \$690.00 security deposit leaving a balance due to the Landlord of **\$1,809.98**.

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: December 16, 2015

Residential Tenancy Branch

