



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNQ, CNR, OPR MNR FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for unpaid rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application pursuant to section 72. The tenant applied to dispute an additional rent increase as well as to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

The landlord's original application for an order of possession and monetary order was made by direct request and adjourned to a participatory hearing for both parties to provide evidence. The landlord attended this participatory hearing while the tenant did not. The teleconference hearing scheduled for 9:30 a.m. continued until 9:45 a.m. During the hearing, the landlord was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord provided evidence that a 10 Day Notice to End Tenancy was served to the tenant on November 2, 2015 by posting it on her rental unit door. The landlord testified that the tenant was served with his Application for Dispute Resolution hearing package on November 23, 2015 by registered mail. The landlord testified that the registered mailing included the landlord's amendment to their original application. The landlord submitted the registered mail receipt and provided a Canada Post tracking number for this mailing. The landlord testified that, out of an abundance of caution, the Application for Dispute Resolution was also served personally to the tenant at her rental unit door. Based on the sworn testimony and documentary evidence submitted by the landlord, I find that the tenant was deemed served with the 10 Day Notice on November 5, 2015 (3 days after its posting) and I find that the tenant was deemed served with the landlord's Application for Dispute Resolution hearing package on November 28, 2015 (5 days after its mailing).

With respect to the tenants' failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing to support their application and given the sworn evidence provided by the landlord, **I order the tenant's application dismissed without liberty to reapply.**

Preliminary Issue: Order of Possession

The landlord originally applied for an Order of Possession however, at the outset of this hearing, he testified that the tenant had vacated the rental unit on December 4, 2015. Therefore, the landlord withdrew his application for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave both testimonial and documentary evidence that the residential tenancy agreement began on November 1, 2010. The landlord submitted a copy of the residential tenancy agreement and subsequent documents amending that agreement. The rental amount for this unit was originally established at \$1010.00. The landlord submitted all rental increase notices dated November 1, 2011; November 1, 2012; November 1, 2013; November 1, 2014; and November 1, 2015 for the rental unit with a current market rent amount of \$1120.00 payable on the first of each month. The landlord testified that he continued to hold the \$505.00 security deposit paid by the tenant on October 28, 2010.

The landlord testified that the tenant vacated the rental unit on December 4, 2015 but that the tenant did not pay her full rental amount on November 1, 2015. The landlord testified that the tenant paid \$588.00 for the month of November 1, 2015 but that she was required to pay \$1120.00. The landlord submitted a copy of the tenant's application for rent subsidy and testified that, on review of that application, it was determined that the tenant was required to pay a further portion of the rental amount for her unit. He

submitted a letter from the landlord that stated the discovery of other income beyond subsidy by the tenant created an obligation for the tenant to pay the difference between her subsidy and the market rental amount. Several other letters from the landlord to the tenant were submitted by the landlord to show ongoing attempts to explain and collect on the additional rental amount as well as outstanding rent.

The landlord also testified that the tenant did not pay rent in December 2015 although she remained in the unit and in possession of the keys to the rental unit until December 4, 2015. The landlord sought to recover December 2015 rent testifying that, based on the date that the tenant vacated the rental unit, she had possession for a portion of the month and the landlord testified that the tenant provided no notice that she was vacating the residence thereby preventing the landlord for attempting to re-rent the unit for a portion of December 2015.

The landlord testified that the rental unit has now been re-rented for a start date of January 15, 2016. Therefore, the landlord reduced the amount sought for the month of January 2016 by half. The amount sought by the landlord at this hearing is outlined as follows,

Item	Amount
Outstanding Rent – November 2015 \$1120.00 – 588 paid = \$532.00	\$532.00
Unpaid Rent – December 2015	1120.00
Rental Loss – ½ January 2016	560.00
Less Security Deposit	-505.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount Sought by LL	\$1757.00

Analysis

The landlord provided sworn undisputed testimony and supporting evidence that the tenant did not pay rent of \$532.00 due on November 1, 2015. The landlord testified, with supporting evidence that the tenant did not pay rent of \$1120.00 due on the first of December 2015. The landlord testified that he was unable to re-rent the rental unit for the month of December or the first two weeks of January 2016. He explained that attempts had been made to re-rent the rental unit as soon as possible. He sought an additional half months' rent (\$560.00) to reflect the rental loss.

Section 26(1) of the *Act* establishes that “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.” I accept the undisputed sworn evidence of the landlord that the tenant failed to pay the full rental current rental amounts. The landlord provided proof of the rental amount in the form of the original tenancy agreement as well as the rental increase notices. The landlord also submitted the letters sent to the tenant to resolve this matter as well as her subsidy information and application.

While the tenant had made an application to dispute the Notice to End Tenancy, she did not attend this hearing in support of her application or to rebut the application for a monetary order. The landlord provided proof of service of the notice of this hearing, both original and the amended application. The tenant’s application itself serves as evidence of her awareness of the landlord’s application and this hearing.

Based on all the evidence, the landlord is entitled to a monetary order as follows,

Item	Amount
Outstanding Rent – November 2015 \$1120.00 – 588 paid = \$532.00	\$532.00
Unpaid Rent – December 2015	1120.00
Rental Loss – ½ January 2016	560.00
Less Security Deposit	-505.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1757.00

Section 72(2) of the *Act* reads as follows:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant...

I allow the landlord to retain the security deposit in partial satisfaction of this monetary order.

As the landlord was successful in his application, the landlord is entitled to recover the filing fee for this application.

Conclusion

I dismiss the tenant's application in its entirety.

The landlord's application for an Order of Possession is withdrawn.

I issue a monetary Order in favour of the landlord in the amount of \$1757.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 08, 2016

Residential Tenancy Branch

