



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; the tenant and her advocate.

At the outset of the hearing the landlord submitted he has possession of the rental unit and no longer requires an order of possession. As a result, I amend the landlord's Application for Dispute Resolution to exclude the matter of possession.

During the hearing the tenant indicated that a previous decision had been made on whether she owed the landlord any rent. I have reviewed the decisions of March 7, 2016 and May 19, 2016.

I note the March 7, 2016 dismissed the tenant's Application for compensation and return of the security deposit with leave to reapply and as such I find this decision has no impact on the Application before me with one exception.

The decision records: "The landlord provided evidence to the Residential Tenancy Branch (Branch), but did not serve it to the tenant as the tenant had vacated the rental unit and accordingly the landlord did not have an address for service where the material will be given personally, left, faxed, or mailed." [reproduced as written].

I note the March 7, 2016 decision also records that the tenant filed her Application for Dispute Resolution on September 3, 2015 and gave the rental unit as her service address. There is no indication in that decision as to when the tenant served the landlord with her Application but applicants are required, generally, to serve their Applications within 3 days of submitting it to the Branch. There is also no indication in

the March 7, 2016 decision as to when the landlord submitted his evidence to the Branch.

I note the May 19, 2016 decision was in response to the tenant's Application for compensation and return of the security deposit. Of relevance to this proceeding the arbitrator made the following findings:

1. "In respect to her claim for harassment due to the landlord serving her Notices to End Tenancy, I find the weight of the evidence is that she did owe \$900 as of August 1, 2016 so the 10 Day Notices to End Tenancy were legally served."
[reproduced as written]
2. "I find the landlord's evidence credible that he had no key to the premises, the tenant did not answer telephone calls and if he went to the door, he was not trying to gain access but to find out if the tenant was still in residence."
[reproduced as written]
3. "Although this is not the landlord's application, I find the weight of the evidence is that the tenant **may owe** the landlord \$900 to the end of August 2015 and, **depending on proof** to a further \$600 a month until she returned the keys and possession of the unit to the landlord on April 3, 2016." [reproduced as written with my emphasis added]

While I have indicated above that these findings may be relevant to this proceeding I note that in regard to the specific claim made by the landlord for unpaid rent for both the period of July 2015 to August 2015 and the period from September 2015 to April 2016 the arbitrator made no definitive findings as to whether or not the landlord has established the tenant owed him any rent monies.

In regard to the period of July 2015 to August 2015 the arbitrator found the tenant **may owe** the landlord rent and for the period from September 2015 to April 2016 proof would be required to establish if the landlord was owed any rent monies.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent 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 *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in March 2015 as a month to month tenancy for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid. I note that return of the security deposit was dealt with in the decision dated May 19, 2016.

The landlord testified that the tenant failed to pay the full rent for the month of July 2015 and August 2015 so he issued her a 10 Day Notice to End Tenancy. The landlord submits the tenant owes rent for the months of July and August in the amount of \$900.00.

In support of his claim the landlord has submitted into evidence copies of receipts issued from the start of the tenancy for rent payments made. I note the landlord has provided a receipt for July 2015 in the amount of \$300.00 and there is no receipt submitted for August 2015.

In regard to the landlord's claim for rent for the period of September 2015 to April 2016 he stated that despite repeated attempts to contact the tenant she would not respond. He also stated that he tried to call the tenant and knocked on the door of the rental unit but she would never answer.

The landlord stated that the tenant had changed the locks on the door to the rental unit and he had no ability to enter the unit. He also did not want to enter the unit because he did not believe he was allowed to do so as long as the tenant was in possession of the unit. He stated that he had noticed the door to the balcony was left open during a cold month but he still did not enter the unit.

The tenant submitted that once she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent she started looking for a new place to live and found one. She stated she moved out of the rental unit on September 1, 2015 and should not owe the landlord any rent for the period of September 2015 to April 2016. The tenant stated that she did pay the rent for July and August 2015.

The parties agree that on April 3, 2016 when the tenant served the landlord with her hearing package for the May 19, 2016 hearing the landlord had the tenant sign a handwritten note that stated that gave the keys and possession of the rental unit to the landlord and that she had removed her belongings and that the unit was cleaned.

The tenant also acknowledged that she had changed the locks during the tenancy and did not give the new keys to the landlord until April 3, 2016.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to the claim for unpaid rent of \$300.00 for July 2015 and \$600.00 for August 2015, the burden of proving that rent was not paid rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made.

When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant would be able to provide a receipt for a cash payment that has been made.

In these circumstances the tenant's failure to provide any receipts for payments made for the months of July, over the initial \$300.00, and August 2015 has significantly impaired her ability to prove that she did pay her rent for those months.

Based on the testimony of both parties and the documentary evidence of the landlord, I find, on a balance of probabilities, the landlord has established the tenant failed to pay full rent for the months of July and August 2015 in the amount of \$900.00.

Section 31(2) of the *Act* stipulates that a tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change. Furthermore, Section 31(3) states that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to or the director has ordered the change.

Section 37 of the *Act* requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As per the testimony of both parties I find the tenant changed the locks to the rental unit without the landlord's permission and failed to provide the landlord with keys to the rental unit at any time before April 3, 2016.

As a result, I find that tenant's actions were a breach of both her obligations under Section 31 and Section 37 of the *Act*. I find that it was the tenant's failure to comply with Sections 31 and 37 and her lack of response to the landlord's attempts to contact her that impacted the landlord's ability to determine if the tenant had vacated the rental unit.

However, and despite the landlord's claim in this hearing that he was unaware that the tenant had vacated the rental unit until April, 2016, I find, from the March 7, 2016 decision that the landlord's position at that time was that he could not serve the tenant with evidence in response to the tenant's Application because he did not have an address for service other than the rental unit.

While I accept that since the tenant filed that Application for Dispute Resolution on September 3, 2015 and gave the rental unit as her address for service combined with the tenant's failure to respond to the landlord's attempts to contact her he would not have known she moved out of the rental unit for the month of September 2015.

However, I find it unlikely that the landlord would not have attempted to serve her with his evidence for the March 7, 2016 hearing at any point from October 2015 to April 2016 if he truly believed that she was in the rental unit. As a result, I find the landlord was aware from at least sometime in September 2015 that the tenant had vacated the rental unit.

As the landlord did nothing further, such as change the locks on the rental unit or seek to and obtain an order of possession for the rental unit, either on the basis of unpaid rent or abandonment, I find the landlord has failed to take any steps to minimise the unpaid rent for the period of October 2015 to April 2016.

As a result, I find the landlord is entitled to unpaid rent for the month of September 2015 but not for the months of October 2015 to April 2016.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,550.00** comprised of \$1,500.00 rent owed for July, August and September 2015 and \$50.00 of the \$100.00 fee paid by the landlord for this application as he was only partially successful.

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: July 15, 2016

Residential Tenancy Branch