



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent and utilities; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, the parties confirmed that the tenant has since vacated the rental unit and the landlord has regained possession of the rental unit. Accordingly, I found the tenant's request to cancel the Notices to End Tenancy and the landlord's request for an Order of Possession to be moot. The landlord also withdrew the claim for unpaid utilities against the tenant. Accordingly, the only issue to determine was the landlord's entitlement to unpaid and/or loss of rent from the tenant and the other remedies were dismissed.

I determined that the tenant had served her written submissions and evidence upon the landlord after the deadline for doing so. However, I also heard that the tenant had difficulty serving the landlord because the landlord had provided a service address where she does not reside and the tenant was attempting to serve the landlord in person at that residence. The tenant eventually gave the evidence package to the landlord's adult son, who was occupant of the address provided as the landlord's service address. The landlord confirmed that her son gave her the tenant's evidence package and that she had reviewed it. The landlord indicated she did not object if she were to be deemed sufficiently served. Accordingly, I deemed the landlord sufficiently served with the tenant's written submission and evidence and I considered it in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to recovery unpaid rent from the tenant, and if so, how much?
2. Is the landlord authorized to retain the security deposit in partial satisfaction of unpaid rent?

Background and Evidence

The parties executed a written tenancy agreement that provides for a tenancy set to commence on June 15, 2016 for a fixed term of six months in exchange for the monthly rent of \$1,700.00 due on the first day of every month. The landlord collected two payments of \$400.00 each, on May 30, 2016 and June 6, 2016, toward the \$850.00 security deposit. The parties were in agreement that the tenant was to pay pro-rated rent of \$850.00 for the period of June 15 – 30, 2016. The rent for July 2016 was made by way of three partial payments of \$810.00 on July 1, 2016; \$500.00 on July 4, 2016; and, \$390.00 on July 11, 2016. I heard consistent testimony that the tenant did not pay rent for the month of August 2016 and vacated the rental unit on August 31, 2016.

The parties were in dispute as to whether the tenant paid of \$850.00 for the month of June 2016. The landlord seeks to recover unpaid rent of \$850.00 for the month of June 2016 and \$1,700.00 for the month of August 2016.

It was undisputed that the landlord had issued three Notices to End Tenancy to the tenant, as follows:

- On July 30, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$850.00 in rent was outstanding as of June 15, 2016 and a stated effective date of July 15, 2016 (the landlord indicated this should have read August 15, 2016)
- On July 31, 2016 a 1 Month Notice to End Tenancy for Cause with a stated effective date of August 31, 2016; and,
- On August 15, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$1,700.00 was outstanding as of August 1, 2016 and \$850.00 as of June 15, 2016 and a stated effective date of August 15, 2016.

With respect to the payment or non-payment of \$850.00 for the period of June 15 – 30, 2016 I have summarized the parties' respective positions below.

The tenant testified that her spouse gave \$850.00 in cash to the landlord the morning of June 15, 2016 in the door way of the rental unit. The tenant claims that this was

witnessed by herself and her children who were looking out the front window. The tenant submitted that the landlord did not issue a receipt and indicated that she would return later with her receipt book but when the landlord returned to the property later that day she was removing belongings from the garage on the property and no receipt for the payment was given. The tenant said she heard nothing more about the rent for June 2016 until the landlord returned to the property on July 1, 2016 and requested that the rent for June.

The landlord testified that when the tenancy started the tenant's spouse informed the landlord that the tenant was just relocating from another city and would have to set up a bank account before issuing a rent cheque. The landlord testified that she did not collect any money from the tenant's spouse on June 15, 2016 or at any other time with respect to the month of June 2016. The landlord pointed out that she issued receipts for all cash payments she received and if she did not have her receipt book with her when a tenant presents cash she would grab a piece of paper and pen to issue a receipt. The landlord explained that she has been in the rental business for a long time and would never take cash without issuing a receipt. The landlord described her receipt book as having duplicate pages so that one page is given to the tenant and the duplicate remains in the book. In this case, the landlord had pre-prepared a receipt for the \$850.00 in anticipation that she would receive the payment but that both pages are still in the receipt book and are undated and unsigned because payment was not made. The landlord provided photocopies of the pages in her receipt book.

The landlord further testified that she had a conversation with the tenant's spouse about their financial difficulties and that he indicated that he was waiting for a settlement payment. When payment for June 2016 was not forthcoming the landlord stated that she communicated to the tenant that she was willing to give the tenant a month to make the payment but the tenant was not agreeable. The tenant acknowledged the landlord offered to give the tenant a month to pay \$850.00 for June 2016 but the tenant was not agreeable to the landlord's offer because she was of the position the amount had already been paid. The tenant also stated that she could not speak to her spouse's conversation or situation concerning a settlement.

As for the non-payment of rent for August 2016, there was no dispute that rent was not paid. The tenant had submitted in her written submissions that payment was not made for August 2016 as doing so would have left the tenant in financial hardship and possibly homelessness and that she needed the money to find new housing. The tenant also submitted in her written submissions that the tenant suffered loss of quiet enjoyment at the hands of the landlord. Further, during the hearing the tenant explained that she did not pay August 2016 rent because the landlord was in breach of the Act in

issuing the two Notices to End tenancy without basis for doing so. I did not seek a response to the tenant's position from the landlord as I found the tenant did not present a legal basis for withholding rent for August 2016.

The parties provided consistent testimony that the tenant has not yet returned the keys to the rental unit to the landlord. During the hearing the landlord requested the tenant return the keys to her. The landlord confirmed that she now resides at the rental unit address and the tenant agreed to mail them to the landlord at the rental unit address.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent, such as: overpaid rent, overpaid security deposit, the tenant paid for "emergency repairs" as defined in section 33 of the Act, or the tenant has received the authorization from the landlord or an Arbitrator.

Since all of the Notices to End Tenancy had effective dates in August 2016 and the tenant vacated the rental unit on August 31, 2016, I find the tenancy ended August 31, 2016. Accordingly, I find the tenant was obligated to pay rent for the month of August 2016 in the amount of \$1,700.00 as the tenant did not provide evidence to suggest one of the legal reasons for withholding rent applied. If the tenant is of the position the landlord violated her quiet enjoyment or other parts of the Act and seeks compensation from the landlord for such violations she remains at liberty to file her own Application and establish an entitlement. However, the issue before me is whether the landlord is entitled to rent for August 2016 and I find, for the reasons provided above, that she is. Therefore, I award the landlord unpaid rent of \$1,700.00 for the month of August 2016 as requested.

As for the landlord's entitlement to June 2016 rent, upon consideration of everything before me, I find that I prefer the landlord's version of events over that of the tenant. I make this finding considering the following: The tenant or her spouse made several cash payments to the landlord during this tenancy: two cash payments for the security deposit and three partial payments for the month of July 2016 and the landlord gave a receipt for each of these payments. The landlord has both copies of the duplicate receipt for June 2016 rent that are undated and unsigned and I find the landlord provided a reasonable explanation for that. Further, it is evident to me that the tenant and her family were having financial difficulty, as evidenced by the tenant's own written

submission and the ability to make partial payments only, which I find supports the landlord's position that she had been provided excuses by the tenant's spouse for the non-payment of June 2016 rent. Of further consideration is that the tenant did not call her spouse, the person she alleges gave the cash to the landlord, as a witness for the hearing and the tenant did not offer any other particulars such as where the funds that were allegedly paid on June 15, 2016 originated or proof of a bank withdrawal or cashing of a cheque. Therefore, I find the landlord has satisfied me that the tenant did not pay rent for June 2016 and I grant her request to recover \$850.00 in rent from the tenant for the month of June 2016.

Since the landlord was successful in her application, I further award the landlord recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$800.00 security deposit paid by the tenant in partial satisfaction of the unpaid rent.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent: June 2016	\$ 850.00
Unpaid rent: August 2016	1,700.00
Filing fee	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$1,850.00

The tenant is ordered to return the keys or any other means of access to the property that are still in her possession as agreed during the hearing without delay.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order in the sum of \$1,850.00 for unpaid rent to serve and enforce upon the tenant.

The tenant has been ordered to return the keys or any other means of access to the rental unit to the landlord.

The other remedies sought by the parties in their respective applications are dismissed.

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: October 7, 2016

Residential Tenancy Branch

