



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 2, 2017 ("10 Day Notice"), pursuant to section 66.

The landlord's agent, ST ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager for the landlord company named in this application and that he had authority to represent it as an agent at this hearing. This hearing lasted approximately 52 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlord's 10 Day Notice on May 2, 2017, by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on May 2, 2017.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

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

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

As per the written tenancy agreement, this month-to-month tenancy began on March 1, 2015. The landlord stated that the current monthly market rent for this unit is \$1,110.00. Both parties agreed that the tenant currently pays a rental subsidy of \$590.00 per month to the landlord. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

Both parties agreed that they attended two previous hearings at the Residential Tenancy Branch ("RTB") on March 7, 2017 and March 21, 2017, after which an interim decision was issued on March 13, 2017 and a final decision was issued on April 6, 2017, by a different Arbitrator who presided over both hearings. The file number for both previous hearings appears on the front page of this decision.

The landlord seeks an order of possession for unpaid rent. The landlord issued the 10 Day Notice for unpaid rent of \$3,221.00, due on May 1, 2017. The landlord seeks a monetary order of \$3,221.00 for unpaid rent from December 2016 to February 2017. The landlord said that the tenant failed to pay the difference between her rental subsidy of \$590.00 and the market rent of \$1,110.00 for each of the above months. The landlord maintained that the tenant had a credit on her account for \$109.00 and that was applied against the unpaid rent of \$3,330.00 for the above months, leaving a balance of \$3,221.00 owing by the tenant.

The landlord said that the tenant admitted during the hearing that she had her boyfriend stay over at the rental unit for two days in the last month, and together with all the other days this year, she exceeded the fourteen-day time limit that the landlord imposed in the written tenancy agreement. The landlord said that this made the tenant's boyfriend a tenant and since the tenant's circumstances changed and she did not fill out a current rental subsidy application, that she owed market rent for this unit. The tenant disputed

this, saying that her boyfriend does not live with her, he assists her because she is ill and pregnant, and that she has paid the correct rental subsidy amount each month to the landlord. The tenant stated that her three children do not live with her, as she is caring for herself but that it was her choice to have her children live with her sister. The landlord said that it has been over six months since the tenant's children have lived with her and that this changes her financial circumstances as well.

Analysis

In accordance with section 46(4) of the *Act*, the tenant must file her application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on May 2, 2017 and filed her application to dispute it on May 3, 2017. Accordingly, I find that the tenant's application was filed within the five day limit under the *Act*. Where a tenant applies to dispute a 10 Day Notice in time, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

I make note of, and am guided in part by, the previous final decision, dated April 6, 2017, issued by a different Arbitrator for the previous hearing. The landlord provided a copy for this hearing. The decision found that the landlord failed to show that the tenant did not qualify for subsidized housing and cancelled a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit that was issued on December 21, 2016, which is a relevant time period in this current hearing as well. In it, the Arbitrator stated the following, in part, at pages 4 and 5:

Furthermore, I find that the onus falls on the landlord to prove that the tenant no longer qualifies for subsidy. The landlord's residential tenancy agreement addendum states that failure to disclose information to assess subsidy or a misrepresentation may be a material breach of the tenancy. I find that the tenant has not failed to disclose information to assess a subsidy. I find that, when she became aware that her prospective co-tenant did not disclose, she acted in a timely manner to address this failure by asking him to move out. I find that, although the tenant notified her landlord that her children were not residing in the unit, she was not required to do so as the change to her family composition was temporary. I find that the tenant's children continue to reside in the rental unit, as per the direction of the ministry but are temporarily housed elsewhere. In deciding this matter, I rely on the evidence, both testimony and documentary evidence provided by both parties at this hearing. Particularly, I rely on the landlord's letter dated October 1, 2016 stating that the tenant, applying on her own, continues to qualify for a rent subsidy at \$590.00. I accept the testimony of

the tenant that she continues to receive and pay her subsidized portion of the rent to the landlord as assessed October 1, 2016. I also rely on the fact that both parties agree CF no longer resides on the property. Finally, I find that the tenant has provided evidence, on a balance of probabilities to show that her children will return to her home and are absent from their residence on a temporary basis.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Both parties agreed that the tenant paid rent of \$590.00 for each month and that this rent is current to date. I find that the landlord provided insufficient evidence that the tenant owed market rent, rather than subsidized rent, for this rental unit. The landlord declaring that the tenant's boyfriend staying over more than fourteen days this year made him a tenant and changed her circumstances, without having appropriate evidence of same, is insufficient to show a change in the tenant's circumstances. The landlord made this observation based on speculation with no concrete evidence. I accept the tenant's testimony that her boyfriend does not live with her, he only visits as a guest to assist her, and that he had moved out prior to the two previous hearings. I also accept the tenant's testimony that her three children being away from home is a temporary situation that will be corrected once she gives birth to her fourth child.

The landlord does not have a recent rental subsidy application from the tenant that shows a change in her financial circumstances. I find that the landlord has provided insufficient evidence that the tenant owes market rent for this unit. Accordingly, I find that the tenant paid the correct amount of subsidized rent of \$590.00 for each month from December 2016 to February 2017.

I find that the amount indicated as unpaid rent in the landlord's 10 Day Notice, \$3,221.00, is an amount that the tenant was not required to pay for rent because she had already paid the correct subsidized monthly rent. Accordingly, I dismiss the landlord's application for an order of possession for unpaid rent, without leave to reapply. I allow the tenant's application to cancel the landlord's 10 Day Notice. The landlord's 10 Day Notice, dated May 2, 2017, is cancelled and of no force or effect.

Since I have found that the tenant paid the proper amount of rent from December 2016 to February 2017, I dismiss the landlord's application for a monetary award for unpaid rent of \$3,221.00, without leave to reapply.

I find that the current rent owing for this tenancy at this rental unit is \$590.00 per month until it is legally changed in accordance with the *Act* or it is legally changed as per the

rental subsidy guidelines. I find that the tenant has paid the correct rent amount to the landlord up to and including June 30, 2017.

I order the tenant to complete a rental subsidy application and provide proof of her income to the landlord for the period beginning on July 1, 2017. I order the landlord to provide the tenant with the correct rental subsidy application by July 1, 2017 and for the tenant to provide a completed application to the landlord by July 5, 2017. The tenant agreed to provide the above information during the hearing.

Since I am not awarding a monetary award to the landlord and the tenancy is continuing, I dismiss the landlord's application to retain the tenant's security deposit with leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application to retain the tenant's security deposit is dismissed with leave to reapply. The remainder of the landlord's application is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 10 Day Notice is allowed. The landlord's 10 Day Notice, dated May 2, 2017, is cancelled and of no force or effect.

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: June 16, 2017

Residential Tenancy Branch