



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNSD, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; for a monetary order for return of the security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent and witness for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and the witness. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for an over-payment of rent?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2014 and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies rent in the amount of \$1,061.00

per month payable on the 1st day of each month, but is subsidized so fluctuates from budget year to budget year and is now \$927.00 per month effective March 1, 2017. There are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$531.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord's agent further testified that the tenant was served with a One Month Notice to End Tenancy for Cause on September 12, 2017 by posting it to the door of the rental unit. A copy has been provided and it is dated September 12, 2017 and contains an effective date of vacancy of October 31, 2017. The reason for issuing it states: "Tenant is repeatedly late paying rent." In the last year the tenant has been late with rent on 5 occasions:

- October 17, 2016 the tenant paid \$1,185.00;
- January 6, 2017 the tenant paid \$1,210.00, which included a \$25.00 late fee;
- June 21, 2017 the tenant paid \$952.00 which included a \$25.00 late fee;
- August, 2017 rent was returned by the financial institution for insufficient funds, and the landlord is not certain when the tenant re-paid rent for that month;
- October 2, 2017 the tenant paid \$927.00.

The tenant's income changed and it is the responsibility of the tenant to notify the landlord with appropriate documents in order to adjust the amount of rent payable, and the tenant didn't provide those documents until sometime in February, 2017. Rent was reduced for March, 2017 to \$927.00 per month, however, the clerk who entered the data credited the tenant \$258.00 for each of January and February 2017, and the landlord collected rent of \$411.00 in March, 2017 to account for those credits.

The landlord's witness testified that she is the property manager and has only spoken with the tenant on one occasion, but not about a reduction in rent.

The tenant testified that rent was late because the tenant lost her job. In September, 2017 the tenant went to the landlord's office to inform the landlord, and someone in the landlord's office told the tenant that the person had no power to do anything. The tenant spoke to another person about rent for October, 2017 who told the tenant it was okay to pay late. The tenant has paid late fees, and that should be fair; the tenant tried her best.

The tenant claims an overpayment of rent in the amount of \$1,300.00. The subsidy allows for the tenant to pay 30% of income, and the tenant's income was \$1,900.00. The landlord's agents said they would review the tenant's file, but the tenant does not know who she spoke to. The tenant provided paperwork to the landlord in February, 2017, and because the tenant was looking for a job, the tenant didn't provide it sooner. Also, the EI

office kept the tenant on the phone for 1 or 2 hours on hold and the tenant didn't have time for that. The tenant submits that the reduction in rent ought to have been retroactive to October, 2016.

The tenant seeks an order cancelling the notice to end the tenancy, monetary compensation for the overpayment of rent in the amount of \$1,300.00, and an order that the landlord comply with the tenancy agreement and the subsidy amounts.

At the end of the hearing, the landlord's agent agreed that if an Order of Possession is granted, the landlord would be content with an effective date of vacancy of January 31, 2018. However, the tenant agreed to vacate the rental unit effective October 31, 2017, but did not withdraw any of the other claims.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that the notice was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. Residential Tenancy Policy Guidelines specify that not less than 3 late payments justify repeated late rent. The tenant does not dispute that rent was late, but submits that since late fees were paid, that should suffice. However that is contrary to the law and I find that the landlord has established that the notice was given in accordance with the *Residential Tenancy Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy contained in that notice is October 31, 2017, and the tenant agreed to vacate that date, I grant the Order of Possession effective at 1:00 p.m. on October 31, 2017, and I leave it to the landlord to determine when to enforce the order.

With respect to the tenant's application for return of the security deposit, the landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit or make an application for dispute resolution claiming against it. Since the tenancy has not ended and the tenant has not yet provided the landlord with a forwarding address in writing, I find the application to be premature, and I dismiss it with leave to reapply.

With respect to the tenant's application for monetary compensation for overpayment of rent, I have read the tenancy agreement, which states that the tenant is responsible for the full rent or the Tenant Rent Contribution (30% of gross income) if eligible for a Rent Subsidy, whichever is higher. It also states that if the tenant is eligible for the subsidy, the tenant agrees to complete a declaration indicating, among other things, gross income and

assets as well as proof of such at least once in every 12 month period and from time to time as required by the landlord. I cannot find that there is any obligation on the landlord to apply a subsidy retroactively, particularly when it was the tenant's responsibility and didn't "have time" to get the paperwork together for the landlord. The landlord has credited \$516.00, and I am not satisfied that the tenant is entitled to any more, and I dismiss the tenant's application for monetary compensation.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling the One Month Notice to End Tenancy for Cause is hereby dismissed, and I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on October 31, 2017.

The tenant's application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenant's application for a monetary order for recovery of the filing fee is hereby 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 27, 2017

Residential Tenancy Branch