



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATATECH CONSULTING LTD
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, MNDC, RR, OLC, LRE, CNR

Introduction

This is a Review Hearing Decision arising from an Ex Parte hearing conducted on September 7, 2017. The original dispute was regarding a notice to end tenancy for unpaid rent. The Adjudicator granted the Landlord an order of possession and a monetary order on September 7, 2017.

On September 15, 2017, the Tenant submitted an Application for Review Consideration on the basis of fraud. The Tenant alleged that parties agreed to accept late payment of rent for August 2017. The Tenant submitted that the Landlord fraudulently obtained a monetary order for August 2017 rent.

On September 27, 2017, an Arbitrator heard the Application for Review Consideration and found that it appears that the Tenant paid the rent for August 2017. The Arbitrator suspended the September 7, 2017, Decision until a new hearing is completed.

The Tenant and the Landlord attended the new hearing.

Preliminary and Procedural Matters

On October 19, 2017, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and for a reduction in rent for the cost of repairs, services, or facilities agreed upon but not provided.

The Tenant's application was scheduled to be heard at the same time as this Review Hearing regarding the Landlord's Application.

The Residential Tenancy Branch Rules of Procedure provides Arbitrators the discretion to dismiss unrelated claims with or without leave to reapply. Since this matter is a re-

hearing related to an order of possession due to unpaid rent, I do not find that the Tenant's claims for compensation are sufficiently related. I dismiss the Tenant's claims with leave to reapply.

The Tenant testified that she moved out of the rental unit at the end of October 2017.

Issues to be Decided

- Did the Landlord receive the rent owing under the tenancy agreement for August 2017?
- Did the Landlord continue the tenancy by accepting rent for August 2017, and September 2017?

Background

In the initial Decision the Adjudicator considered the documentary evidence submitted by the Landlord and found that the Tenant was obligated to pay the monthly rent in the amount of \$1,000.00, as per the tenancy agreement. The adjudicator accepted the evidence that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

The adjudicator found that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 22, 2017. The adjudicator granted the Landlord an Order of Possession and a Monetary Order in the amount of \$1,000.00, for unpaid rent owing for August 2017.

New Hearing

The Tenant was granted a review hearing on the basis of an allegation that she reached an agreement with the Landlord to pay August 2017 rent, along with September 2017, rent at the end of August 2017.

The Landlord testified that she received a rent payment for August 2017, rent on August 30, 2017, by cheque. She testified that the cheque included the rent payment for September 2017. She testified that she did not reach an agreement with the Tenant permitting her to pay August rent late, but she accepted the rent payment because she decided to give the Tenant another chance in the tenancy.

The Landlord testified that by the time she received the Decision and monetary order for \$1,000.00 she had already received the rent payment for August 2017, from the Tenant. She testified that she took no action to enforce the monetary order.

The Tenant testified that there was a verbal agreement that she could pay August 2017, rent late. She testified that the Landlord changed her mind.

The Tenant testified that she understood that the Landlord was agreeing that the tenancy could continue when she accepted rent for August 2017, and September 2017. The Tenant testified that this is supported by the fact that she received a 2 Month Notice To End Tenancy For Landlord's Use Of Property from the Landlord on September 2017.

The Landlord acknowledged that she served the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 25, 2017.

Analysis

The Residential Tenancy Branch Policy guideline 11 Amendment and Withdrawal of Notices provides:

A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue.

After considering the testimony and evidence before me, I make the following findings:

I find that the Landlord's intention was to allow the tenancy to continue when she accepted the September 2017, rent payment. The Landlord testified she was prepared to give the Tenant another chance. This finding is supported by the Landlord's decision to issue a 2 Month Notice To End Tenancy For Landlord's Use Of Property, rather than rely on the end of tenancy date within the 10 Day Notice issued prior. I find that the parties believed that the tenancy would continue beyond the effective date of the 10 Day Notice, and therefore the order of possession that was granted on the basis of the 10 Day Notice is set aside.

The Tenant moved out of the rental unit at the end of October 2017.

I find that the Landlord had received full payment of rent for August 2017, prior to receiving the monetary order for \$1,000.00 dated September 7, 2017. Since the Landlord has received the rent for August 2017, the monetary order dated September 7, 2017, is set aside.

Conclusion

Based on circumstances that occurred after the Landlord submitted documentary evidence by way of a direct request process to obtain an order of possession and monetary order, I find that the Decision and Orders dated September 7, 2017, are set aside.

The Tenant does not owe the Landlord rent for August 2017. The tenancy ended when the Tenant moved out of the rental unit at the end of October 2017.

The Tenant has leave to reapply for dispute resolution for her monetary claims.

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: December 11, 2017

Residential Tenancy Branch