



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL, MT, CNR, OLC, LRE, LAT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord KK (the landlord) applied 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 all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant identified Landlord CV as the sole Respondent in her application for the following:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

All parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord and Landlord CV gave sworn testimony that they posted the 10 Day Notice on the tenant's door at approximately 12:30 p.m. on November 2, 2017. Based on this evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 5, 2017, the third day after it's posting.

All of the parties confirmed that they received dispute resolution hearing packages and written evidence packages from the Applicants well in advance of this hearing. I find that these documents were duly served in accordance with sections 88 and 89 of the *Act*.

At the hearing, the landlord withdrew his application for \$810.00 in unpaid rent, as he said the tenant is now current with all of her rent payments for this tenancy.

Issues(s) to be Decided

Should an extension of time be granted to the tenant to apply to cancel the landlord's 10 Day Notice? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other orders be issued to the landlord? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on June 1, 2016. Although monthly rent was initially set at \$800.00, payable in advance on the first of each month, that rent increased to \$810.00, as of September 1, 2017. The landlord continues to hold the tenant's \$400.00 security deposit.

The 10 Day Notice was issued for non-payment of \$810.00 in rent for November 2017. The landlord provided sworn testimony and written evidence that he has received payments of \$810.00 for each of November and December 2017, accepted for use and occupancy only and not to reinstate this tenancy.

The tenant's amended application for a monetary award of \$173.36 was for reimbursement of expenses she incurred in retrieving her cat from the animal shelter where it resided while she was staying in a health care facility.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their applications:

1. The landlord agreed to withdraw his 10 Day Notice of November 2, 2017, and reinstate this tenancy.
2. The landlord withdrew the remainder of his application for dispute resolution.
3. The landlord agreed that the tenant may withhold \$173.36 from her January 2018 rent and that this tenancy will continue at the monthly rent of \$810.00 in February 2018 until revised in accordance with the *Act*.
4. The tenant agreed to withdraw her application for dispute resolution.
5. Landlord KK apologized to the tenant for the recent history of this tenancy. The tenant said that she wished the record to show that she accepted Landlord KK's apology.
6. The landlord committed to start afresh with the tenant as of the date of this hearing and committed to purge all documents associated with the history of this tenancy, save for the tenancy agreement which commenced this tenancy.
7. All parties agreed that the terms of this settlement agreement constituted a final and binding resolution of their applications and all issues currently arising out of this tenancy and that they took this action of their own free will and without any element of force or coercion.

Conclusion

I order that the 10 Day Notice of November 2, 2017 is set aside and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

To give legal effect to Clause 3 of this settlement agreement, I order the tenant to reduce her regular January 2018 rent on a one-time basis by \$173.36. Therefore, I order that the monthly rent for January 2018 is \$636.64. As of February 1, 2018, the monthly rent for this tenancy returns to \$810.00, which is to remain in effect until revised in accordance with the *Act*.

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 21, 2017

Residential Tenancy Branch