



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAPS PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent dated October 4, 2017. The landlord applied for an Order of Possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent issued October 4, 2017 and November 2, 2017. 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.

By way of an evidence submission, the tenant provided a copy of the 10 day Notice she received in October 2017 and November 2017. Although the tenant did not amend her Application for Dispute Resolution in accordance with the Rules of Procedure, I considered the 10 Day Notice issued in November 2017 to be under dispute out of an abundance of fairness to the tenant and I amended her application accordingly.

By way of an evidence submission, the landlord had provided a Monetary Order worksheet but the landlord did not amend its application in accordance with the Rules of Procedure. The Monetary Order worksheet indicated that the landlord was seeking compensation for unpaid or loss of rent for the months of November 2017 and December 2017 and estimated cleaning costs. I confirmed that the tenant remains in possession of the rental unit. Accordingly, I found the landlord was premature in seeking cleaning costs from the tenant. The tenant also confirmed to me that she understood the landlord was seeking a Monetary Order for unpaid rent for November and December 2017. Therefore, I amended the landlord's application to include a request for a Monetary Order for unpaid and/or loss of rent.

As for the security deposit, the landlord requested that the landlord be authorized to retain it in partial satisfaction of the unpaid rent. This request is non-prejudicial for the

tenant since it reduced an Monetary Order I issue to the landlord and I amended the landlord's application to include a request to retain the security deposit.

During the hearing both parties attempted to introduce evidence unrelated to payment of rent or validity of the 10 Day Notices before me. I declined to hear evidence unrelated to the matters before me.

It should also be noted that the tenant had to be cautioned multiple times to stop interrupting the proceedings. After giving my findings orally to the parties the tenant's interruptions did not cease despite my repeated instruction for her to stop. I ended the teleconference call, approximately 45 minutes after the hearing commenced, even though the tenant was still yelling and crying into the telephone.

Issue(s) to be Decided

1. Should the 10 Day Notices to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid rent?
4. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on September 15, 2017 and the landlord collected a security deposit of \$447.50. The monthly rent was set at \$895.00 payable on the first day of every month.

The tenant failed to pay rent that was due on October 1, 2017 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the tenant's door on October 4, 2017. The 10 Day Notice indicates rent of \$895.00 was outstanding as of October 1, 2017 and an effective date of October 17, 2017.

On October 12, 2017 the landlord issued a letter to the tenant advising her that if rent payment is made after five days after a 10 Day Notice is served the payment would be accepted for use and occupancy only and the tenant would be required to vacate the rental unit at the end of the month.

On October 25, 2017 the tenant gave the landlord cash of \$445.00 and a non-profit society provided the landlord payment of \$450.00. The tenant did not vacate the rental unit on October 31, 2017.

The tenant did not pay rent for November 2017 and on November 2, 2017 the landlord posted another 10 Day Notice on the door of the rental unit. The 10 Day Notice indicates rent of \$895.00 was payable on November 1, 2017 and an effective date of November 17, 2017. The tenant did not pay the outstanding rent and has not yet vacated the rental unit. The tenant has not paid any monies to the landlord for December 2017 either.

The landlord seeks an Order of Possession effective on December 31, 2017. The landlord also seeks to recover unpaid and/or loss of rent for the months of November 2017 and December 2017 by way of the security deposit and a Monetary Order for the balance.

The tenant seeks more time to pay the outstanding rent and continue the tenancy. The tenant provided a number of personal circumstances that lead to her inability to pay rent, including: breaking her foot, loss of assistance when her teenage daughter moved out, paying other debts, barriers with her family members, and the inability to get a roommate because the landlord would not approve of the person she intended to have move in. Alternatively, the tenant indicated she seeks more time to move out, indicating she will be homeless and have to live on the streets.

The landlord acknowledged that an Income Assistance "Intent to Rent" form was completed for the prospective roommate but the landlord contacted Income Assistance shortly afterward to withdraw the landlord's intention to rent to the roommate following a background check.

Both parties provided consistent testimony that the prospective roommate never moved in and never paid any rent.

The landlord was not agreeable to a payment arrangement or continuation of the tenancy.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with 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 under the Act. There are very limited and specific circumstances when a tenancy may legally withhold rent; which are: overpayment of rent or a security deposit; an emergency repair made by the tenant and criteria of section 33 are met; or, authorization was given to the tenant by the landlord or an Arbitrator.

Where a tenant does not pay rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Upon review of the 10 Day Notices before me, I find that they are duly completed and in the approved form; meaning they meet the form and content requirements of section 52 of the Act.

When a tenant receives a 10 Day Notice the tenant has five days to either pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case, the tenant did not pay the outstanding rent within five days of receiving either of the 10 Day Notices served upon her but the tenant filed to dispute the Notices. Where a tenant files to dispute a 10 Day Notice the tenant must be prepared to demonstrate: that rent was paid before issuance of the 10 Day Notice or within five days of receiving the 10 Day Notice; the landlord waived the 10 Day Notice; the tenant had the legal right to withhold rent; or another basis under the Act that would render the Notice invalid or unenforceable. I find the circumstances described by the tenant do not consist tie a legal basis under the Act to not pay rent when due and I find there is no other basis for me to cancel the 10 Day Notice(s). Therefore, I dismiss the tenant's application and I find the landlord entitled to an Order of Possession under section 55(1) of the Act.

Since the effective date of the most recent 10 Day Notice served upon the tenant has since long passed and the tenant has not paid rent since October 2017, I find that it would unduly prejudice the landlord to issue an Order of Possession any later than the date requested by the landlord. Therefore, I grant the landlord's request for an Order of Possession effective at 1:00 p.m. on December 31, 2017.

I further grant the landlord's request to recover unpaid and/or loss of rent from the tenant for the months of November 2017 and December 2017 since the tenant has had the benefit of occupancy of the rental unit during these months. I also award the

landlord recovery of the filing fee paid for the landlord's application. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order in the amount calculated below:

Rent for November 2017	\$ 895.00
Loss of rent for December 2017	895.00
Filing fee	100.00
Less: security deposit	<u>(447.50)</u>
Monetary Order	\$1,442.50

Conclusion

The tenant's application to cancel the 10 Day Notices to End Tenancy for Unpaid Rent is dismissed.

The landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2017. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,442.50 to serve and enforce upon the tenant.

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 20, 2017

Residential Tenancy Branch