



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR ERP LRE
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 1, 2018.

The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- cancel the 10 Day Notice for unpaid rent or utilities;
- an order that the Landlord make emergency repairs to the rental unit; and,
- to suspend or set conditions on the Landlord’s right to enter the rental unit.

The Landlord applied for the following relief:

- An order of possession for unpaid rent or utilities;
- A monetary order for unpaid rent or utilities; and,
- To recover the filing fee for the cost of this application.

Both parties were present and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The Landlord testified that she sent the Tenant (to the rental unit) a copy of her application package and evidence by registered mail on December 5, 2017, and provided a receipt as part of her evidence. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received this package the fifth day after its registered mailing. The Tenant did not provide any documentary evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord testified that the rental property sold (as of the end of November 2017) and she is no longer the actual Landlord of the rental unit. As such, she no longer needs an order of possession, and cancels the 10 Day Notices she issued in October and November of 2017. I have amended the Landlord's application accordingly and will only be considering the portion of her application dealing with rent owed up until the time the property was sold.

With respect to the Tenant's application, I find the issues she applied for are now moot, given that her requests pertain to an individual who is no longer her Landlord (second two grounds listed above under the Tenant's application). Further, her application to cancel the Notice to End Tenancy is also moot, since the Landlord cancelled those Notices and withdrew that part of her application.

The only remaining issue on the application before me is whether or not the Landlord is entitled to a monetary order for unpaid rent or utilities.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of a tenancy agreement. It lists the start of the tenancy as December 4, 2013, and states that rent in the amount of \$700.00 is due on the first of the month.

The Tenant stated that rent is only \$650.00; she stated that she does not know why the tenancy agreement states that rent is \$700.00. When I clarified with the Landlord, she stated that she accepted \$650.00 in rent for the majority of the tenancy because she felt bad for the Tenant and has only received \$700.00 for a couple of months.

The Landlord stated that the Tenant failed to pay September rent in full, and only paid \$560.00 in rent. As part of the Landlord's documentary evidence, she submitted copies of two email money transfers. The first transfer was on September 16, 2017, for \$200.00, and the second was on September 29, 2017, for \$275.00. The Landlord further stated that the Tenant failed to pay any rent for October or November 2017.

The Tenant stated that she paid \$620.00 for September 2017, which is more than what the Landlord indicated for that month. The Tenant indicated that she paid some rent via email transfer, and some was paid in cash. However, she stated that the Landlord did not give her a receipt. The Landlord acknowledges that she did not give a receipt for rent paid in cash in September 2017.

The Landlord stated that the property sold and changed hands at the end of November 2017. The Landlord provided documentation to support that the property sold at the end of November

2017. The Landlord stated that she did not receive any rent from the Tenant for October or November of 2017, despite still being the Landlord. The Tenant stated that she was aware the property had sold, and was not sure who she was supposed to pay.

The Tenant stated that she gave November rent to the new owners of the property for November because she thought they were the new landlords. During the hearing, I asked if the Tenant could provide any documentary evidence to show that she made the payment to the person she thought was the new owner for the month of November 2017. The Tenant stated that she was given a receipt for this payment and that she would provide me with a copy. I provided the Tenant until noon on the day following the hearing to provide evidence to support this transaction. However, the Tenant did not submit the documentation (receipt) as she stated she would. The Landlord stated that the Tenant is making this up and she has not paid anybody for the months of October or November 2017.

The Tenant acknowledged not paying any rent for October but stated that this was because of deficiencies with the rental unit and to compensate her for repairs she had to complete over the years. The Tenant stated that she fixed a washing machine, which had been broken for 3.5 years. The Tenant also pointed out that there was a hole in the wall that needs fixing, and the floor in the kitchen has issues. The Landlord denies ever being told about these issues and believes that it is an excuse to not pay rent.

Analysis

In the matter before me, the Landlord has the onus to substantiate what amount is still owed to them for unpaid rent or utilities.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

First, I do not find there is sufficient evidence to show that any of the repairs that the Tenant may have completed or identified qualify as emergency repairs, under the *Act*, and there is no evidence to show that she had any right under the *Act* to withhold rent for any expenses she may have incurred or for any of the deficiencies she identified.

After considering the totality of the information before me, I find there is a lack of clarity surrounding what amount of rent was still due and unpaid to the Landlord. The Landlord has stated that she accepted less than what was listed on the tenancy agreement for an extended period of time (\$650.00 rather than \$700.00). In the Landlord's worksheet, she indicated that the

Tenant owes \$700.00 per month, right up until the time she stopped being the Landlord in November of 2017. However, I find her evidence is internally inconsistent with respect to what the actual amount of rent was. Given that the Landlord accepted \$650.00 per month in rent for the majority of the tenancy, despite there being a written agreement indicating \$700.00, I find \$650.00 was the amount of rent that was due each month.

I note that the Landlord testified in the hearing that the Tenant paid \$560.00 for September 2017 by way of a cash payment and an email money transfer. However, her documentary evidence shows that she received email money transfers from the Tenant totalling \$475.00. It is not clear if there were additional cash payments made by the Tenant, and how the Landlord determined that \$560.00 had been paid for September 2017. I find the Landlord's evidence with respect to what was paid for September 2017 to be unclear. As such, I find the Landlord has provided insufficient evidence to show what was owed for that month, and the Landlord will not be granted compensation for this month.

With respect to October 2017 rent, the Tenant acknowledged that she did not pay this amount because of her issues with the rental unit, as above. However, I have already found that the Tenant did not provide sufficient evidence to show that she has any right under the Act to withhold rent, or that any of the repairs she made would qualify as emergency repairs. Ultimately, I find the Tenant was obligated to pay \$650.00 in rent for October 2017, and that she failed to do so.

With respect to November 2017 rent, I note that the Landlord has provided documentation showing she was still the Landlord up until the end of November 2017. Given this, I find she is still entitled to recover unpaid rent for this month. The Tenant was provided the opportunity to provide me with proof that she paid the people she thought were the new owners. However, the Tenant failed to provide me with a copy of the receipt she said she had. I find the Tenant is still responsible for November 2017 rent, and I find the Landlord is entitled to recover rent for this month.

Given that the Landlord was substantially successful in this hearing, I grant her the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

In summary, I grant the Landlord a monetary order based on the following:

- October 2017 rent - \$650.00
- November 2017 rent - \$650.00
- Filing Fee - \$100.00
- **Total - \$1,400.00**

Conclusion

The Tenant's application is dismissed, without leave to reapply, as the issues are now moot.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,400.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: February 1, 2018

Residential Tenancy Branch