



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This matter proceeded by way of a Direct Request Proceeding. On February 26, 2018, the landlord's application was considered by the Adjudicator and was adjourned to a participatory hearing scheduled on today's date. The interim decision should be read in conjunction with this decision.

During the adjournment period the tenant filed a cross application which was joined to be heard on today's date.

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"); and
2. For authorization to change the locks to the rental unit.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

At the outset of the hearing the landlord requested to amend their application to include loss of rent for April 2018. As rent is the most basic term of a tenancy agreement, I find, pursuant to

section 62(3) that the landlord's application is amended to include a claim for loss of April 2018, rent.

Issues to be Decided

Should the Notice be cancelled or upheld?

Is the landlord entitled to a monetary order for unpaid rent?

Should the tenant be authorized to change the locks to the rental unit?

Background and Evidence

The tenancy commenced February 17, 2015. Rent in the amount of \$1,150.00 was due on the first day of each month. The tenant paid a security deposit of \$575.00.

M-A for the landlord testified that they gave the tenant a notice of rent increase on or about September 19, 2017, by placing through the tenant's mail slot. M-A stated that the rent was increased to \$1,206.00, in accordance with the Act. Filed in evidence is a copy of the notice of rent increase.

M-V for the landlord testified that they gave the tenant the Notice on February 5, 2018, by putting the Notice through the mail slot. M-V stated they also informed the tenant in writing that they balance due was \$97.00, as the tenant had paid part of the rent of February 2, 2018. The landlord stated that the tenant did not pay the outstanding amount until February 16, 2017, which was not within five (5) days.

The tenant testified that they did not receive a notice of rent increase. The tenant stated that they paid rent on February 2, 2018. The tenant stated that they paid the balance that was said to be owed on February 16, 2018. The tenant stated that they did not make an application to dispute the Notice, until March 1, 2018, which is past the effective vacancy date in the Notice.

Both parties agreed the tenant failed to pay rent for April 2018. The landlord's seeks to retain the security deposit to offset the amount owed.

Analysis

Based on the testimony of both parties, I find that the tenant was served with a notice to end tenancy for non-payment of rent on February 5, 2018. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

In this case the tenant had paid the base rent; however, they did not pay the amount of the rent increase that was given to the tenant on September 19, 2017, which was effective January 1, 2018. I accept the evidence of M-A that it was put through the tenant's mail slot as copy of the

rent increase was submitted as evidence in support of the rent increase and has the ring of truth.

Further, even if I accept that the tenant did not receive the notice of rent increase, which I do not, I find the tenant had five (5) days to dispute the Notice. In this case the tenant disputed the Notice on March 1, 2018, after the effective vacancy date. I find section 66(3) of the Act, gives me no authority to consider the tenant's application to dispute a notice to end the tenancy that is beyond the effective date in the Notice. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further, the tenant admitted that they did not pay rent for April 2018. I find the tenant breached section 26 of the Act, as they had no authority under the Act to withhold rent. A tenant cannot withhold rent simply because they feel entitled to do so.

I find that the landlord has established a total monetary claim of **\$1,206.95** comprised of unpaid rent for April 2018 and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$575.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$731.95**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have ordered the tenancy to end, I find it appropriate to dismiss the tenant's request to be authorized to change the locks.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession, and may keep the security deposit in partial satisfaction of the claim. I grant the landlord a monetary order for the balance due.

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: April 09, 2018

Residential Tenancy Branch