



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNRL-S, OLC

Introduction

This hearing involved cross applications made by the parties. On October 18, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*") and seeking monetary compensation for unpaid rent pursuant to Section 67 of the *Act*.

On October 31, 2018, the Tenant made an Application for Dispute Resolution seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

The Landlord attended the hearing and the Tenant attended the hearing as well, with B.B. attending as her advocate. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing package was served to the Tenant by registered mail on October 18, 2018 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package.

The Tenant advised that a Notice of Hearing package and her evidence was served to the Landlord in person on November 4, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Landlord's Use of Property?
- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Tenant entitled to an Order that the Landlord comply with the *Act*?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 10, 2015. Rent was established at \$650.00 per month and was due on the first of each month. A security deposit of \$350.00 was paid even though this exceeded the maximum amount permitted to be collected pursuant to Section 19 of the *Act*. The tenancy agreement was submitted into evidence corroborating these details.

All parties agreed that the Notice was served to the Tenant on August 30, 2018 in person. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The effective date of the Notice was noted as October 31, 2018. The Landlord stated that his wife's cousin had moved into the rental unit after the Tenant gave up vacant possession.

The Tenant accepted that she received the Notice on August 30, 2018, stated that she did not dispute the Notice, and advised that she vacated the rental on October 31, 2018. Both parties agreed that the Tenant withheld October 2018 rent as per the compensation requirements pursuant to Section 51 of the *Act* after being served the Notice.

The Tenant made her Application as an Order for the Landlord to comply and return her security deposit. Both parties agreed that the Landlord provided her with a cheque at the end of tenancy in the amount of \$325.00 and the Tenant acknowledged that she cashed this cheque. However, the Tenant paid a security deposit of \$350.00 and is seeking the balance. The Tenant advised that she did not provide the Landlord with her forwarding address in writing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit. Furthermore, this Section states that once the Notice is received, the Tenant would have 15 days to dispute the Notice. If the Tenant does not do so, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 51 of the *Act* states that the Tenant, after receiving the Notice, is entitled to receive from the Landlord on or before the effective date of the Notice an amount that is the equivalent of one month's rent and the Tenant may withhold this amount from the last month's rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55(1) of the *Act* states that if the Tenant has not submitted an Application for Dispute Resolution seeking to cancel the Notice within the required timeframe and the Landlord's Notice complies with all the requirements of Section 52 of the *Act* and is upheld, the Landlord must be granted an Order of Possession.

The undisputed evidence before me is that the Tenant was served the Notice on August 30, 2018. As the fifteenth day fell on Friday September 14, 2018, the Tenant must have

made her Application by that date at the latest. However, the undisputed evidence is that the Tenant did not dispute this Notice. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

When reviewing the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on August 30, 2018, I find that it complies with the requirements set out in Section 52. As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the tenancy ended in accordance with the Notice.

However, as the Tenant has given up vacant possession of the rental unit on the effective date of the Notice, I am satisfied that it is not necessary to issue an Order of Possession. Furthermore, as the parties agreed that October 2018 rent was withheld as per the compensation requirements of the Notice, the Landlord acknowledged that he has not suffered a rental loss and that the issues in his Application have been resolved. As such, I dismiss the Landlord's Application in its entirety.

As a note, during the hearing, the parties were also advised of the potential compensation requirements of the Notice with respect to whether or not the Landlord used the property for the stated purpose after the effective date of the Notice.

With respect to the Tenant's Application, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord did not receive the Tenant's forwarding address in writing as she did not provide one. Pursuant to Section 38 of the *Act*, if the Tenant wants the security deposit returned, she must provide a forwarding address in writing to the Landlord first. As the Tenant had never provided the Landlord with her forwarding address in writing, I do not find that the Tenant's address on her own Application meets the requirements of a separate written notice. During the hearing, the Tenant relayed her forwarding address to the Landlord.

Therefore, the Landlord is put on notice that he now has the forwarding address and he must deal with the security deposit pursuant to Section 38. The Landlord is deemed to have received the decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit. Moreover, the undisputed evidence is that the Landlord already returned \$325.00 of the \$350.00 security deposit, so the \$25.00 balance will be subject to the 15-day time frame.

Conclusion

I dismiss the Landlord's Application without leave to reapply.

I dismiss the Tenant's Application for Dispute Resolution with leave to reapply.

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: November 27, 2018

Residential Tenancy Branch