



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on November 7, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number(s) in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on November 24, 2014 and the monthly rent is \$750.00 payable on the 1st day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The rental unit is an apartment located above commercial units. The landlord leased the entire building and subleased the apartment to the tenant. The landlord testified that the property has since sold and the landlord's lease was not renewed by the new property owner. The landlord's lease was originally set to expire on July 31, 2018 but was extended to October 31, 2018. The lease officially ended as of October 31, 2018. The landlord no longer has access to the building.

The landlord testified that on July 6, 2018 she served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified that the tenant paid the outstanding rent for June and July 2018 on July 21, 2018. The landlord testified the tenant has not paid any rent since and is claiming compensation for unpaid rent for the months of August 2018, September 2018 and October 2018. The landlord also requested to amend the application to claim unpaid rent for November 2018 and December 2018.

Analysis

Landlord is defined under section 1 of the Act as follows:

***"landlord"**, in relation to a rental unit, includes any of the following:*

...

- (c) a person, **other than a tenant occupying the rental unit**, who
 - (i) is entitled to possession of the rental unit, and

- (ii) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

Pursuant to section 44 of the Act, a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 *[tenant's notice]*;
 - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;
 - (iv) section 48 *[landlord's notice: end of employment]*;
 - (v) section 49 *[landlord's notice: landlord's use of property]*;
 - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
 - (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

As this tenancy is a sublease agreement and the original lease between the landlord and the owner of the property has expired as of October 31, 2018, I find this sublease tenancy also ended as of this date.

However, as the applicant landlord in this case is no longer a person who is entitled to possession of the rental unit, I decline to grant the landlord an order of possession for this rental unit.

Section 26 of the Act requires that 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.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$2250.00. I have limited this award up until October 31, 2018 which is the date that this sublease tenancy and the original lease entitling the landlord to possession of the rental unit ended.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2350.00.

The landlord continues to hold a security deposit of \$375.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1975.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1975.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: December 06, 2018

Residential Tenancy Branch