



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid rent and other damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing I confirmed service of the landlord's hearing package upon the tenants. The tenants described a package that is consistent with what was submitted to the Residential Tenancy Branch and in particular I noted that the landlord did not include a copy of a 10 Day Notice to End Tenancy for Unpaid Rent with the Application for Dispute Resolution. The tenants did not provide a copy of the 10 Day Notice either. Since neither party provided me with a copy of the 10 Day Notice I asked the parties to read from and describe the 10 Day Notice before them. The parties provided consistent testimony as to the content of the 10 Day Notice with one discrepancy: the landlord testified that his copy shows his signature; whereas, the tenant testified that the tenant's copy does not have a signature of the landlord.

The tenant had provided a written response and evidence to the Residential Tenancy Branch which was received by mail on December 21, 2018. The tenant testified that he also sent a copy of his response to the landlord via Xpresspost on December 19, 2018. The landlord stated he had not received it yet. I did not admit the tenant's evidence package as it was not sent to the landlord within the service deadline. A respondent's evidence must be received by the applicant no less than seven clear days before the hearing. Mailing the package on December 19, 2018 would not meet that requirement. I informed the parties that the tenants would have the opportunity to provide their position orally.

There was no dispute that the landlord has not collected rent from the tenants for the months of November and December 2018. Given the lack of documentary evidence before me, I strongly suggested the parties try to reach a mutual agreement or I would make a decision based on the

evidence before me. The parties were unable to reach a mutual resolution in the hearing time that remained.

I severed the landlord's damage claim and dismissed it with leave to reapply pursuant to the authority afforded me under Rule 2.3 of the Rules of Procedure. Pursuant to Rule 2.3 of the Rules of Procedure, claims made in the application must be related to each other and Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Accordingly, the remainder of this decision pertains to the issue of unpaid rent.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent, and/or loss of rent?

Background and Evidence

Both parties were in agreement that a written tenancy agreement was executed; however, neither party provided a copy of the agreement for my review. The parties were in agreement as to the terms of co-tenancy, which were that the tenancy started on October 1, 2017 for a fixed term of two years and the tenants were required to pay rent of \$1,200.00 on the first day of every month. No security deposit was collected by the landlord.

The tenants had provided the landlord with post-dated cheques for the months of October 2017 through to and including October 2018. There was no dispute that the October 2018 rent cheque did not clear until early November 2018.

Both the landlord and the tenants provided consistent testimony that the rent was withheld for the month of November 2018 and no rent has been paid for December 2018. The parties provided consistent testimony that the landlord's agent personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on November 7, 2018 while the landlord witnessed the service. The tenant testified that his copy of the 10 Day Notice was not signed by the landlord. The landlord testified that his copy does bear his signature. Neither party provided a copy of the 10 Day Notice as evidence prior to this hearing.

The tenant submitted that he withheld rent for November 2018 because he is of the position the landlord owes him money for work he did on the rental unit. The tenant stated that he asked the landlord to be paid for the work during a meeting they had on November 7, 2018 but the landlord refused to do so. In turn, the tenant decided to withhold rent for November 2018.

The tenant testified that he has made many improvements to the rental unit. The landlord indicated he has not been able to verify the tenant's claims. I declined to hear further on this matter as I was of the view this was a dispute involving a contract for services and in the

absence of an agreement that the tenant may withhold rent in satisfaction of work he performed the allegations concerning work performed were not relevant to the case before me.

The tenant also testified that he had the furnace repaired; however, the tenant has yet to provide the landlord with a copy of the receipt/invoice. I also noted that the amount of the receipt/invoice changed during the tenant's testimony. The landlord indicated he may be agreeable to compensating the tenant for the cost of a repair made to the furnace if he is able to verify the services performed.

I heard that the female co-tenant moved out of the rental unit in the summer of 2018 and the male tenant remained in possession of the rental unit. The female tenant testified that the landlord's agent presented her with an "end of tenancy" document in November 2018 that she signed but did not receive a copy of the document. The landlord acknowledged that he was aware his agent had documents in her possession with respect to ending the tenancy. The landlord's agent was not present for the hearing. The landlord stated that he was willing to accept that the female tenant signed a document ending the tenancy in November 2018 and that he would not hold the female tenant responsible for unpaid or loss of rent after November 2018 since it is the male tenant that remains in possession of the unit.

The female tenant was of the position she should not be held liable for any unpaid rent after she moved out.

Analysis

Where tenant fails to pay rent, a landlord may end the tenancy by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receipt of a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the Notice or file an Application for Dispute resolution to dispute the Notice.

Where a tenant does not pay the outstanding rent or dispute the 10 Day Notice, the landlord may apply for an Order of Possession based on the Notice to End Tenancy the landlord has issued; however, the landlord bears the burden to demonstrate a valid notice has been duly served upon the tenant. A Notice to End Tenancy issued by a landlord must comply with section 52 of the Act, including the requirement that it be signed by the landlord or landlord's agent.

Rule 2.5 of the Rules of Procedure require that a copy of the Notice to End Tenancy be provided along with the Application for Dispute Resolution and these documents are served together to the tenants as part of the hearing package under Rule 3.1.

Rule 2.5 provides as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

[My emphasis underlined]

A landlord is also informed of the requirement to provide a copy of the Notice to End Tenancy in making an application for an Order of Possession on the Application for Dispute Resolution itself. Below, is an excerpt of the Application the landlord completed:

Dispute information:

SECTION A: Ending tenancy and seeking an order for the tenant to move out

Notice to End Tenancy

When the dispute involves a Notice to End Tenancy, the Notice must be given to the tenant before applying for Dispute Resolution and the Notice to End Tenancy must be submitted to the Residential Tenancy Branch with this application.

When was the Notice to End Tenancy served?

| | | |
|-----|-------|------|
| 07 | 11 | 2018 |
| day | month | year |

How was it served?

Reason(s) for seeking an order of possession:

- ☒ I issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30)

[Except of Landlord's Application with arrow added by me for emphasis]

I find the landlord has not produced the required documentation that would enable me to verify that the Notice to End Tenancy served upon the tenant is valid and complete. Therefore, I find the landlord has not met his burden to prove his entitlement to an Order of Possession and I do not issue one with this decision.

As for the landlord's monetary claim, I find the consistent testimony of both parties demonstrates that the landlord has not received any rent for the month of November 2018 and I find the tenants have not established a legal basis under the Act for not paying the rent due. The Act provides very limited and specific circumstances where a tenant may lawfully withhold or make deductions from rent due.

If the tenant has done work for the landlord under a contract for services but does not have the landlord's consent or authorization to withhold rent as payment for the work, the tenant's recourse is to pursue enforcement of the contract for services in the appropriate forum such as

Small Claims Court or Civil Resolution Tribunal. The tenant is not at liberty to unilaterally decide to withhold rent in satisfaction of another contract.

The tenant also claims to have had the furnace repaired but there is no entitlement to make a deduction from rent for an emergency repair before giving copy of the receipt/invoice to the landlord. Therefore, I find the tenant was not in a position to withhold rent for an emergency repair made. I suggest the parties familiarize themselves with section 33 of the Act to further determine whether the tenant may be entitled to deduct rent from a future month's rent for an emergency repair.

Also, the female tenant moving out of the rental unit does not in itself end her obligation under the co-tenancy agreement. Co-tenants are jointly and severally liable to fulfill the terms of the tenancy until the tenancy ends or is modified by mutual agreement. It is upon the co-tenants to apportion any debts or obligations amongst themselves; however, one party to an agreement may not unilaterally decide to remove oneself from the contract. To end the female tenant's obligation under the tenancy agreement but leave the tenancy in place for the remaining tenant would require the landlord's consent/agreement. I heard unopposed testimony that the female tenant signed documents to end the tenancy sometime in November 2018. Therefore, I hold both tenants liable to compensate the landlord for unpaid rent for November 2018 and I issue a Monetary Order against both tenants for the November 2018 rent owing of \$1,200.00.

As for December 2018, the male tenant has remained in possession of the rental unit and I find his continued occupation has created further loss for the landlord. Therefore, I accept the landlord's request to obtain a Monetary Order against the male tenant for loss of rent for the month of December 2018 in the amount of \$1,200.00.

Conclusion

The landlord's request for an Order of Possession is denied as the landlord failed to establish a valid and enforceable Notice to End Tenancy was served upon the tenant(s).

It is undisputed that rent for November 2018 was not paid and I have found there to be no legal basis to withhold rent for the month of November 2018. Therefore, I have provided the landlord a Monetary Order against both tenants for unpaid rent for the month of November 2018 in the amount of \$1,200.00.

The male tenant has remained in possession of the rental unit for the month of December 2018 and I provide the landlord with a Monetary Order against the male tenant for the loss of rent for the month of December 2018 as requested.

The landlord's monetary claim for damage to the residential property is dismissed 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: December 27, 2018

Residential Tenancy Branch