



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, MT (Tenant)
 FFL, OPC, OPR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application December 11, 2018 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on a One Month Notice and for reimbursement for the filing fee.

The Landlords filed an amendment dated December 21, 2018 (the “Amendment”). It relates to a 10 Day Notice to End Tenancy and includes a request for rent from December 15th and “projected failure to pay rent” for January 15th.

The Tenant filed her application December 19, 2018 (the “Tenant’s Application”). The Tenant applied to dispute the One Month Notice and for more time to file the Application. The Tenant also applied for compensation for monetary loss or other money owed.

The Landlords and Tenant appeared at the hearing. I reviewed who should be named on the Applications with the parties as the Applications included different parties. Both parties agreed that the Landlords were the only ones who needed to be named as landlords. Both parties agreed the Tenant was the only person who needed to be named as a tenant. The style of cause reflects this.

Both parties agreed the Tenant had vacated the rental unit. Therefore, the following requests are moot and are dismissed without leave to re-apply:

- Landlords' request for an Order of Possession based on a One Month Notice;
- Landlords' request for an Order of Possession based on a 10 Day Notice to End Tenancy; and
- Tenant's dispute of a One Month Notice and request for more time to file the Application.

The Landlords confirmed they were seeking to keep the security deposit towards the unpaid rent.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenant confirmed she received the hearing package and evidence for the Landlords' Application and raised no issues in this regard.

The Landlords advised that they did not receive the hearing package or evidence for the Tenant's Application.

The Tenant testified that she left the hearing package and evidence on a bench at the Landlords' residence, as noted on the Landlords' Application, on January 13, 2019. She said the bench was beside the door to the residence and was where she used to leave tenancy-related items for the Landlords. The Tenant had not submitted evidence in relation to service.

The Landlords advised that they have been out of the country and did not receive the package.

Section 88 and 89(1) of the *Residential Tenancy Act* (the "*Act*") set out the methods of service permitted for evidence and applications for dispute resolution. Leaving a hearing package on a bench by the door of a residence is not a form of service permitted for applications for dispute resolution under section 89(1) of the *Act*.

I also note that the hearing package was not served on the Landlords within three days of the Tenant's Application being made pursuant to section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure (the "Rules"). The hearing package was only served nine days prior to the hearing.

In the circumstances, I was not satisfied that the hearing package was served in accordance with the *Act* and Rules. I dismissed the Tenant's Application with leave to re-apply. This does not extend any time limits under the *Act*.

In relation to the Tenant's evidence, section 88 allows for service in the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1)...

(j) by any other means of service prescribed in the regulations.

Here, the only possible form of service complied with is section 88(g) of the *Act*. However, I am not satisfied that leaving the package on a bench by the door of the residence is sufficient. This is particularly so when the Tenant did not submit evidence in relation to service to support that this was a conspicuous place. I acknowledge that the Tenant testified that this is where she left tenancy-related items for the Landlords during the tenancy. However, the *Act* requires specific forms of service and I do not find it sufficient that the Tenant left the package where she used to leave tenancy-related items.

In the circumstances, I am not satisfied the evidence was served in accordance with section 88 of the *Act*. I heard the parties on whether the evidence should be admitted or excluded during the hearing and told them I would reserve my decision for my written decision. I exclude the evidence given it was not served in accordance with the *Act* and not received by the Landlords prior to the hearing.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between a company and the Tenant in relation to the rental unit. The Landlords confirmed at the outset that they own the rental unit and that the company did not need to be named on the Applications. The Tenant did not take issue with this.

The tenancy started March 15, 2017 and was for a fixed term ending March 15, 2018. The tenancy then became month-to-month.

The agreement states rent is \$2,150.00. The Tenant testified that her portion of the rent was \$2,100.00 and that \$50.00 of the rent related to a garage rented by her father. She said she pays \$2,100.00 for rent and her father pays the balance. Landlord C.D. testified that rent was \$2,150.00 but that \$2,100.00 was fine. She said the Tenant and her father paid rent together. I understood Landlord C.D. to agree that \$50.00 of the rent was for the garage rented by the Tenant's father. The agreement states rent is due on or before the 15th of each and every month.

The Tenant paid a \$1,075.00 security deposit which the Landlords still hold. The agreement is signed by the Tenant and on behalf of the Landlord.

In relation to unpaid rent, the Landlords originally sought unpaid rent for December 15, 2018 to January 14, 2019 and January 15th to February 14th of 2019.

In relation to the rent from January 15th to February 14th of 2019, the Landlords submitted that they were entitled to this because of the state of the rental unit upon the Tenant vacating. They said they could not re-rent the rental unit given the state of it. However, Landlord B.D. acknowledged that the Landlords had no intention of re-renting the rental unit once the Tenant vacated as the rental unit was listed for sale. The Landlords then acknowledged that they were not entitled to rent for January 15th to February 14th of 2019 and made no further submissions on this issue. I told the Tenant she did not need to address this given the position of the Landlords.

In relation to rent for December 15, 2018 to January 14, 2019, the Landlords testified that the Tenant did not vacate the rental unit until January 3, 2019. The Landlords said the Tenant left belongings in the yard until the beginning of January. The Landlords testified that the Tenant did not pay rent for December 15, 2018 to January 14, 2019.

The Tenant submitted that the Landlords wanted to sell the rental unit and therefore she was entitled to one month of free rent under the *Act*. The Tenant confirmed she was not served with a Two Month Notice or Four Month Notice under section 49 of the *Act*. She testified that she vacated the rental unit by January 1, 2019. The Tenant said she removed her belongings from outside the rental unit by January 6, 2019. The Tenant agreed she did not pay rent on December 15th. The Tenant testified that Landlord B.D. said she did not have to pay rent but then changed his mind on December 10, 2018.

In reply, Landlord B.D. said he never agreed that the Tenant did not have to pay rent.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26 of the *Act* states:

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.

Based on the tenancy agreement, I find the Tenant is obligated to pay \$2,150.00 per month for rent and that this is due on or before the 15th of each month. I acknowledge that there is an issue in relation to \$50.00 of the rent being for a garage rented by the Tenant's father. However, the agreement states the Tenant will pay \$2,150.00 in rent. I am not satisfied that the Landlords agreed to a different arrangement given the comments of Landlord C.D. that the Tenant should have been paying \$2,150.00. If the agreement had changed, this should have been reflected in the tenancy agreement. I am not satisfied that both parties agreed to any change and find the Tenant was required to pay \$2,150.00 in rent by December 15, 2018.

I find that the Tenant did not pay rent on December 15th as both parties agreed to this.

The Tenant said she thought she was entitled to one month rent free because she was being evicted and the Landlords wanted to sell the house. The Tenant was never served with a Two Month Notice or Four Month Notice under section 49 of the *Act*. This is what entitles tenants to compensation under section 51 of the *Act*. In the absence of a notice issued under section 49 of the *Act*, the Tenant is not entitled to one month of free rent and she was not entitled to withhold rent on this basis. I note that the Landlords could not have served a notice under section 49 of the *Act* simply because they wanted to sell the rental unit.

The Tenant testified that Landlord B.D. said she did not need to pay rent but then changed his mind December 10, 2018. Even accepting that Landlord B.D. did say she

did not have to pay rent and then changed his mind, he did so before December 15, 2018 when rent was due. At that point, the Tenant was required to pay rent as stated in the tenancy agreement.

I accept that the Tenant did not pay rent as required by the *Act* and tenancy agreement and that she had no authority under the *Act* to withhold rent. I am satisfied the Landlords are entitled to rent for December 15, 2018 to January 14, 2019. I acknowledge that the Tenant did not stay in the rental unit until January 14, 2019. However, rent for the month was due December 15, 2018 and was not paid. The Tenant remained in the rental unit for at least half of the relevant period. In these circumstances, I am satisfied the Landlords are entitled to the rent for the full period requested.

Given the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, I find the Tenant owes the Landlords \$2,250.00. The Landlords are authorized to keep the \$1,075.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a monetary order for \$1,175.00.

Conclusion

The Landlords are entitled to \$2,250.00 for unpaid rent and reimbursement for the filing fee. The Landlords are authorized to keep the \$1,075.00 security deposit. The Landlords are issued a monetary order for \$1,175.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: January 23, 2019

Residential Tenancy Branch