



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR CNR RP

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application, which was adjourned to this participatory hearing. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord make repairs to the unit, site or property.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord was also assisted by an agent who did not testify. The parties were given the opportunity to question each other.

At the commencement of the hearing the tenant advised that she had not received any of the landlord's evidentiary material, however the landlord advised that it was sent to the tenant by registered mail on March 28, 2019, but was returned to the landlord unclaimed. A copy of a Canada Post cash register receipt has been provided for this hearing which contains that date. The landlord's assistant advised that an amendment to the landlord's application and evidence was sent to the tenant by registered mail on April 18, 2019 which has not been picked up by the tenant.

Considering the Canada Post cash register receipt, I am satisfied that the tenant, whether claimed or not, was served with the landlord's evidence in accordance with the *Residential Tenancy Act* and the Rules of Procedure. All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, or should it be cancelled?

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 2, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$3,200.00 per month is payable on the 1st day of each month, although the tenancy agreement, a copy of which has been provided for this hearing, is silent on the date rent is payable, the landlord testified that it is never paid in one lump sum or ever on the 1st day of each month. The rental unit is an apartment in a condominium complex.

The tenancy agreement also specifies a security deposit in the amount of \$1,600.00, however the tenant didn't pay any security deposit or pet damage deposit.

The landlord further testified that the tenant currently owes rent in the amount of \$8,400.00, and on March 19, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated March 19, 2019 and contains an effective date of vacancy of March 28, 2019 for unpaid rent in the amount of \$2,000.00 that was due on March 1, 2019. No rent has been paid to the landlord since, and arrears have continued to accumulate.

The landlord testified that the tenant has made the following payments toward rent:

- \$1,000.00 on December 10, 2018;
- \$600.00 on December 24, 2018;
- \$1,600.00 on December 28, 2018;
- \$2,000.00 on January 3, 2019;
- \$1,200.00 on February 2, 2019, which was the balance due for January, 2019;
- \$1,600.00 on February 2, 2019;
- \$1,600.00 on March 1, 2019, which was the balance due for February, 2019; and
- \$1,200.00 on March 7, 2019.

Rent is usually paid by e-transfer, and the landlord has an accountant who keeps track, and the landlord also keeps a tenant ledger, however a copy has not been provided as evidence for this hearing. The sum of \$2,000.00 is still owed for March, 2019, and no rent has been paid for April or May, 2019.

The tenant testified that on December 10, 2018 the tenant paid \$1,000.00 to the landlord by e-transfer but had to go to the bank due to a transfer limit to pay an additional \$800.00. The tenant also paid \$600.00 on December 25, 2018 and \$1,600.00 on the 28th of December. The tenant testified that she was short \$400.00 for March only, and could not get another roommate to assist with the rent once the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant has not provided any evidentiary material to corroborate any testimony; the tenant's cell phone was destroyed and her computer does not work. The tenant was not able to obtain copies of the e-transfers or any other payments within the time limits as set out in the Rules of Procedure, and was advised to testify as to the payments made. The tenant agrees that no rent was paid for April or May, 2019.

In rebuttal, the landlord testified that the tenant did not pay \$800.00 on December 10, 2018, and was always short with rent. The tenant's payment of \$1,600.00 on March 1, 2019 was for the balance owed for February's rent, and the landlord only received \$1,200.00 for March, 2019. It is not possible that the tenant would over-pay.

Analysis

The *Residential Tenancy Act* states that a tenant has 5 days from the date served with a notice to end a tenancy to pay the outstanding rent or dispute the notice. In this case, the landlord testified that it was served on March 19, 2019 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 22, 2019. The tenant disputed it, but agrees that no rent has been paid since, and therefore, I find no reason to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I dismiss the tenant's application to cancel it.

The Act also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities provided as evidence by the landlord, and I find that it is in the approved form and contains information required by the Act. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The Rules of Procedure also state that claims made by parties must be related. Given that the tenant's claim for repairs is not related to the claim of unpaid rent or the notice

to end the tenancy, and since the tenancy is ending, I dismiss that portion of the tenant's application.

With respect to the landlord's monetary claim, I do not accept that the tenant paid more money than owed. If I were to accept the tenant's testimony, it would mean that the tenant had overpaid rent in December, 2018. The landlord disputes that, and testified that the tenant did not pay \$800.00 on December 10 in addition to \$1,000.00 the same day. I accept the payments as set out by the landlord, and I find that the tenant is in arrears of rent the sum of \$2,000.00 for March; \$3,200.00 for April and \$3,200.00 for May, 2019; for a total of \$8,400.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,500.00.

This order is final and binding and may be enforced.

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: May 14, 2019

Residential Tenancy Branch