



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, DRI, MNDC, LRE, AS, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On June 10, 2019, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On June 17, 2019, the Landlords applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Other than a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy of the tenancy agreement, the Landlord was not able to serve a copy of his documentary evidence to the Tenant. Since the Tenant has not received the Landlord's evidence and has not had an opportunity to consider it and respond, the Landlord's documentary evidence will not be considered in this hearing.

The Landlord confirmed that he has received a copy of the documentary evidence that was provided by the Tenant.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent. The Tenant's claims for money owed or compensation for loss due to illegal rent increases are dismissed with the right to reapply.

The Tenant testified that she is no longer living in the rental unit and she does not wish to pursue her application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant does not want to continue a tenancy relationship with the Landlord.

The Landlord confirmed that the Tenant has moved out of the rental unit and the Landlord does not want to pursue an order of possession for the rental unit. The Landlord wanted to pursue his application for a monetary order for unpaid June 2019 rent.

The hearing proceeded on whether or not the Landlord is entitled to a monetary order for unpaid rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The parties testified that the tenancy began back in 2014; however, the most recent tenancy agreement between them began on April 1, 2018, as a one year fixed term tenancy. Rent in the amount of \$2,500.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00.

The tenancy agreement indicates that the Tenant must move out on March 30, 2019 at the end of the tenancy for the owner's personal use.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 8, 2019, ("the 10 Day Notice") The 10 Day Notice indicates the Tenant has failed to pay rent of \$2,500.00 that was due on June 1, 2019. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenant received the 10 Day Notice on June 8 and disputed the 10 Day Notice within the required timeframe.

The Landlord testified that the Tenant has not paid the rent owing under the tenancy agreement for June 2019. The Landlord testified that he not received any amount of June 2019, rent. The Landlord requested to amend his application to include a claim for a loss of July 2019, rent in the amount of \$2,500.00.

The Landlord is requesting a monetary order for unpaid rent in the amount of \$5,000.00.

In reply, the Tenant testified that she did not pay the rent owing under the tenancy agreement for the month of June 2019, because she believed that she was entitled to one month of free rent. When asked if she recently received a 2 Month Notice To End Tenancy For Landlord's Use Of Property from the Landlord, the Tenant replied that she has not received a Two Month Notice.

The Tenant testified that the Landlord intended to end the tenancy because she would not agree to pay an illegal rent increase of an additional \$400.00 per month. The Tenant testified that she refused to pay the proposed increase of rent and she continued to pay the rent of \$2,500.00 for April 2019, and May 2019.

The Tenant testified that when she attended the rental unit in late June 2019, the Landlord had changed some locks at the rental unit. She testified that there is a self-contained unit included in her tenancy, and the Landlord changed the lock. She testified that she has not occupied the rental unit since June 22, 2019; however, some of her possessions remained in the unit.

The Landlord testified that he asked the Tenant to pay an increase of \$400.00 per month because she was using extra utilities. The Landlord did not issue a Notice of Rent Increase form to the Tenant.

The Landlord testified that he did change the lock to the laundry room door and on June 23, 2019, he changed the lock to the entrance of a self-contained suite in the house that the Tenant had a right to possess under the tenancy agreement. The Landlord testified that he believed the house was abandoned by the Tenant. The Landlord submitted that changing the locks did not affect the Tenant's access to the unit as the lock on the door was broken and the suite was accessed.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the fixed term tenancy agreement was set to end on March 30, 2019. When the Landlord accepted the rent payment of \$2,500.00 for April 2019 and May 2019, the tenancy continued on a month to month basis. The tenancy continued with the same terms and conditions and with the same rights and responsibilities under the Act.

I find that the Tenant never received a Two Month Notice from the Landlord and the Tenant is therefore not entitled to compensation in the amount of one month's rent payable under the tenancy agreement.

I find that the Tenant is obligated under the tenancy agreement to pay the rent owing for the month of June 2019. I find that the Tenant did not have a legal right to withhold payment of June 2019, rent due to any entitlement to a free month's rent.

I award the Landlord the amount of \$2,500.00 for a loss of June 2019, rent. I decline an award to the Landlord for a loss of July 2019, rent. I do not accept that the Landlord considered the rental unit to be abandoned when he changed the locks at the rental unit. The Tenant disputed the Landlord's 10 Day Notice and her rights to the tenancy were undetermined until the outcome of the hearing. In addition, the Landlord was aware that the Tenant had sublet the one bedroom suite, with the Landlord's permission,

to another occupant. I find that the Landlord illegally changed locks at the rental unit. I find that the Landlord's actions of changing locks played a large part of the Tenant's decision to vacate the rental unit. As such, the Landlord's claim to be compensated for a loss of rent for July 2019, is dismissed.

I find that the tenancy ended on June 23, 2019, when the Landlord changed locks at the rental unit. The Tenant testified that she did not occupy the rental unit beyond June 22, 2019.

I find that the Tenant owes the Landlord the amount of \$2,500.00 for June 2019, rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties are responsible for a breach of the Act, I decline an award to recover the costs of the filing fees.

I grant the Landlord a monetary order in the amount of \$2,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The tenancy continued on a month to month basis when the fixed term agreement expired on March 30, 2019, and the Landlord accepted the rent payment for April 2019.

The Tenant was not entitled to one month of free rent for June 2019, and did not have a legal right to withhold payment of the rent. The Tenant failed to pay the rent of \$2,500.00 owing under the tenancy agreement for June 2019.

The Landlord is granted a monetary order for unpaid rent in the amount of \$2,500.00.

The Tenant's claims for money owed and/or compensation for loss due to illegal rent increases are dismissed with the right 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: July 30, 2019