



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEARMAN ENTERPRISES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, OPR, MNR, FFT, FFL

Introduction

This hearing was scheduled to deal with cross applications. The tenant requested cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and other remedies. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and had the opportunity to be 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 that the parties had exchanged their respective hearing packages upon each other.

The parties had to be instructed a number of times to conduct themselves appropriately during the hearing. The parties had a tendency to not answer the questions posed to them but provide opinions and extraneous information not requested, and interrupting the proceeding. The hearing was concluded whilst both parties were present and given the opportunity to ask questions.

I noted that the identity of the tenant was different on the two applications before me. I determined the landlord used a nickname for the tenant. I have amended the style of cause to reflect the tenant's legal name and the name he commonly uses.

I noted that the identity of the landlord as different on the two applications before. The tenant had named an individual as his landlord. The landlord's application indicates the landlord is a corporation. The landlord's agent stated the corporation owns the subject property. Both parties indicated they did not have a written tenancy agreement to present to me. The only documentation before me that was generated during the

tenancy was the 10 Day Notice to End Tenancy for Unpaid Rent that both parties provided to me for consideration. Upon review of the 10 Day Notice, I noted that the landlord is identified as being a corporation. Accordingly, I have amended the tenant's application to identify the corporate landlord as identified on the 10 Day Notice before me.

The landlord's agent suggested that the parties had a commercial tenancy agreement because the rental unit is located on commercial property and the landlord used a document that is called a commercial tenancy agreement. I explored this issue further and the parties were in agreement as to the following facts: the tenant was required to pay monthly rent of \$500.00 and in exchange he was provided a 2 bedroom apartment to be used for living accommodation. Storage facilities are also located on the property; however, rental of the storage facilities are separate agreements from that pertaining to rental of the living accommodation.

Section 2 of the *Residential Tenancy Act* (the Act) provides that the Act applies to tenancy agreements between a landlord and a tenant with respect to possession of a rental unit and use of residential property. By definition under section 1 of the Act, a tenancy agreement includes written and oral agreements; and, a rental unit is defined as living accommodation rented to a tenant.

Section 4 of the Act excludes certain property from application under the Act, including:

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

Having heard the rental unit was rented to the tenant as living accommodation under one agreement, and rental of storage facilities located elsewhere on the property are facilitated through separate agreements, I was satisfied the tenancy agreement for the living accommodation is subject to the Act. However, I have not dealt with any agreements over which I do not have jurisdiction, such as agreements regarding rental of storage facilities located on the property.

Both parties stated the tenant has since vacated the rental unit. As such, I found the tenant's request for cancellation of the 10 Day Notice and the landlord's request for an Order of Possession based on the 10 Day Notice to be moot as of the date of this hearing. Since the tenant has already vacated, an Order of Possession is no longer required and I do not provide one with this decision. The other remedies sought by the

tenant on his application as also moot since the tenancy has already ended and I dismiss the tenant's application in its entirety.

I identified the only remaining issue for me to determine is whether the tenant owes the landlord for rent. The landlord requested that the monetary claim be amended to include loss of rent for July 2019 since the tenant continued to occupy the rental unit throughout the month of July 2019. Since it was undisputed that the tenant occupied the rental unit throughout July 2019 and the tenant did not pay rent for July 2019, I found the landlord's request to be reasonably foreseeable and I permitted the amendment.

Issue(s) to be Decided

Has the landlord established an entitlement to recovery unpaid and/or loss of rent, as amended?

Background and Evidence

The parties provided consistent testimony that the tenant was required to pay monthly rent of \$500.00 on the first day of every month. It was undisputed that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$2,000.00 was outstanding by sending it to the tenant via registered mail on June 15, 2019. The registered mail was successfully delivered on June 19, 2019.

The landlord submitted that the outstanding rent of \$2,000.00 was the sum of rent owed for the four months of March 2019 through June 2019. The landlord seeks to recover this unpaid rent, plus loss of rent for the month of July 2019 since the tenant did not vacate the rental unit until early August 2019.

The tenant acknowledged that he had not paid rent since December 2018. The tenant's reason for not paying rent was that he could not locate the landlord's manager at the time. The tenant explained that the landlord's agent appearing at this hearing introduced himself as the owner of the property on May 13, 2019 and the two had a discussion concerning the tenant taking over management of the property. The agreement was never put in writing and the parties had a different recollection of their agreement.

The tenant testified that he was to take on the role of manager and that this job was to start immediately on May 13, 2019; however, the tenant also stated that he instructed

the landlord was to contact his lawyer but the landlord never did. I asked the tenant several times how he was to be compensated for performing management duties and the tenant was very evasive in responding to my question but eventually the tenant stated the compensation was to be his "rent" plus his electricity bill. The tenant stated that the management agreement was terminated by the landlord a couple of weeks later, orally and in writing, although he could not recall the exact date(s). The tenant subsequently expanded his testimony to say the compensation he was to be paid would include his rental arrears.

The landlord's agent testified that he took over management of the property from the former manager on May 13, 2019. The landlord's agent approached the tenant and they had an agreement that the tenant was to clean up the property and have trees removed and that in exchange for this work the tenant would be compensated the equivalent of his rental arrears, or \$3,000.00. The landlord testified this was to be a one-time deal and not an on-going managerial position. The landlord stated that the tenant did not do any work and the landlord terminated the agreement approximately one week later, although he did not provide an exact date of the termination either. The landlord's agent stated he had to hire a tree removal company and he cleaned up the property himself. The landlord's agent stated that he did not know why the tenant expected him to call the tenant's lawyer and the landlord's agent never did call the tenant's lawyer, if he had one.

The tenant responded by stating he did pay an individual to do some work during his time as the manager and that he had an invoice to show that; however, the tenant did not produce that evidence for this proceeding. Nor, did the tenant provide me with any specifics as to how much was paid to this individual, or the amount, the date, or whether he had provided a copy of the invoice to the landlord.

The tenant acknowledged that after receiving the 10 Day Notice he did not pay the rental arrears as he was of the position the rental arrears were already written off as part of their management agreement. The tenant testified that he vacated the rental unit by the end of July 2019.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

The parties were in agreement that the tenancy agreement provided that the tenant would pay rent of \$500.00 on the first day of every month. It was also undisputed that the tenant did not pay rent for several months. The tenant acknowledged he has not paid rent for the months of January 2019 onwards; however, the landlord is only seeking unpaid rent from March 2019 onwards and I limit the landlord's claim to include the months of March 2019 through July 2019.

The tenant argued that the landlord waived or had "written off" the rental arrears debt as part of the compensation payable to him for performing management duties.

Where a tenant argues that they had or have a legal right to withhold rent, I find the tenant has the burden to establish that right. A landlord who waives entitlement or has "written off" a tenant's rental arrears may be a basis for not paying the rent, or a legal right to withhold rent; however, in this case, I was provided conflicting oral testimony by the parties as to what was agreed upon and there was no written agreement in place. The tenant described an agreement whereby he would have an on-going managerial role at the property; whereas, the landlord described a one-time clean up job to be performed or paid for by the tenant. Also, the amount of compensation payable for services rendered was inconsistent and not overly clear. What was clear is that the agreement, whatever it may have been, was terminated a short time after it formed. Based on the conflicting oral evidence before me, I find I am unsatisfied that the parties had a meeting of the minds or that the tenant had a right to withhold or not pay a certain amount of rent.

In light of the above, I grant the landlord's request to recover unpaid rent and loss of rent from the tenant for the months of March 2019 through July 2019 in the sum of \$2,500.00 [5 months x \$500.00 per month]. I further award the landlord recovery of the \$100.00 filing fee. Therefore, the landlord is provided a Monetary Order in the total sum of \$2,600.00 to serve and enforce upon the tenant.

Although the tenant claims to have incurred an expense during his brief management position, I encourage the tenant to consider that he has benefited from \$1,000.00 in this decision since the landlord did not seek or obtain a Monetary Order for unpaid rent for the months of January 2019 or February 2019. Further, an Arbitrator who has jurisdiction under the *Residential Tenancy Act* will not resolve a dispute concerning an employment contract or a contract for services except where it is relevant to the tenancy, if at all. Employment contract or contract for services disputes ought to be resolved in the appropriate forum such as through the employment Standards Branch or Civil Resolution Tribunal or Small Claims Court, as appropriate.

Conclusion

The landlord has been provided a Monetary Order for unpaid and/or loss of rent in the sum of \$2,600.00 to serve and enforce upon the tenant.

I do not provide an Order of Possession with this decision since the tenant has already returned possession of the rental unit to the landlord.

The tenant's application has been dismissed without leave.

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: August 20, 2019

Residential Tenancy Branch