



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE HOME PROPERTIES MANAGEMENT
SOLUTION INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL OPRM-DR**

CNR RR

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46; and
- An order for a reduction of rent pursuant to sections 32 and 62.

The tenant, MC attended the hearing (“tenant”). The landlords attended the hearing and were represented by agent JG (“landlord”). Both parties acknowledge being served with one another’s Notice of Dispute Resolution Proceedings package and evidence and stated they had no issues with timely service of documents.

Preliminary Issue

The parties agree that the landlord has sold the property as of the end of October. The landlord is no longer seeking an end to the tenancy as there is no longer a tenancy agreement between the parties. The landlord is only seeking a monetary order for unpaid rent and recovery of the filing fee. Pursuant to section 62(4), I dismiss the

landlord's application for an Order of Possession as this issue does not form a dispute that may be determined under Part 5 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Is the tenant entitled to a rent reduction?

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on May 1, 2019 for a fixed term ending on April 30, 2020 (as written). Rent was set at \$2,900.00 per month payable on the first day of each month. 2/3 of hydro and gas Utilities were to be paid by the tenants. A security deposit of \$1,450.00 and a pet damage deposit of \$1,450.00 were collected by the landlord and the landlord continues to hold it. Attached to the tenancy agreement is a one page addendum containing 17 terms.

The landlord testified that in August of 2019, the tenant was \$400.00 short on his August rent. He promised the landlord he would make up the arrears the following month, but in September the arrears were not paid and September rent was also not paid. On September 12, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("notice") indicating the tenant failed to pay \$3,300.00 in unpaid rent that was due on September 1, 2019. The tenant acknowledges receiving the notice on September 12th. Since receiving the notice, the tenant also failed to pay October rent to the landlord, and the landlord seeks a monetary order that includes unpaid rent for October.

The tenant testified that he and the co-tenant are constantly harassed by their neighbour. The neighbour shoots marbles at him and the landlord has done nothing to prevent the harassment. The tenant argues that it is the responsibility of the landlord to ensure he is provided with quiet enjoyment, free from harassment from the neighbour and that because of this, he admits to not paying rent for the months of September and October. For August, the tenant testifies \$100.00 of it is for a garbage bin he shouldn't be charged for, however he does not dispute he agreed with the landlord previously that he would pay for it.

The tenant testified the rental unit has been sold and he has entered into a new tenancy agreement with the new purchaser of the property, his new landlord. He did not provide a copy of the new tenancy agreement but testifies he has paid rent for the month of November to the new landlord. The landlord, LL testified that the property has been sold and she is no longer the owner of the rental unit or a landlord to this tenant.

Analysis

The tenancy agreement between the tenants and the named landlords on this application ended when the property was sold. The tenant's application for a rent reduction is therefore dismissed.

The tenant acknowledges receiving the notice on September 12, 2019. He filed to dispute the notice 4 days later, on September 16, 2019 in compliance with section 46 of the *Act*.

Section 26 of the *Act* states:

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.

In the case before me, the tenant acknowledged he did not pay the arrears of \$400.00 for August, or the rent for September or October. Although he felt entitled to withhold rent from his landlord because his neighbor was harassing him, he did not have a right under the *Act* to deduct all or a portion of his rent. Only an arbitrator with the authority delegated by virtue of section 9.1(1) of the *Act* has the authority to determine whether the tenant has the right to withhold rent or deduct any portion of rent.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure allow an arbitrator to amend a claim to include unpaid rent when it could be reasonably anticipated by the tenant. As such, I allow the landlord to increase his claim to include unpaid rent for the month of October 2019.

Based on the undisputed evidence that the tenant did not pay rent for the months shown below, I find the landlord is entitled to the following:

Item	Amount
Arrears in rent for August 2019	\$400.00
Rent for September 2019	\$2,900.00
Rent for October 2019	\$2,900.00
Filing fee	\$100.00
Total	\$6,300.00

As the landlord was successful in the claim the landlord was awarded the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$6,300.00**. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: November 18, 2019

Residential Tenancy Branch