



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S; OPM; FFL

Introduction

This hearing dealt with a landlord's application for an Order of Possession based on a mutual agreement to end tenancy; and, a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit.

The landlords were represented by an agent. The tenant appeared on her own behalf.

The landlord's agent testified that a hearing package was sent to each of the named respondents on October 11, 2019; however, he was uncertain as to whether it was sent regular mail or registered mail. The tenant appearing for the hearing stated it was sent regular mail and that she received it in the mailbox when she returned to the property on November 1, 2019.

Although the tenant was not served via registered mail, as required when a hearing package is mailed to a respondent, the tenant acknowledged receiving the documents and I deemed her sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The landlords had named two co-tenants in filing their Application for Dispute Resolution; however, I noted that only one tenant was named on the tenancy agreement and signed the tenancy agreement. I also noted that only one tenant signed the Mutual Agreement to End Tenancy. The tenant appearing before me confirmed that she was the only tenant who signed the tenancy agreement although her daughter, the other named respondent referred to by initials MK, also lived in the rental unit and paid rent.

In the absence of any documentary evidence to demonstrate MK had privity of contract, and considering MK was not properly served with notification of this proceeding and did

not appear of the hearing, I was not satisfied MK had status as a tenant and I excluded her as a named party to this proceeding. I informed the parties that I considered the tenant appearing before me, referred to by initials LK, as the only tenant legally entitled and obligated under the tenancy agreement and the Act.

LK pointed out that the landlord misspelled her name on the Application for Dispute Resolution. I note that the landlord did not spell the tenant's name as it appears on the tenancy agreement. Therefore, I amended the tenant's name on the style of cause to reflect the spelling provided to me by the tenant.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?
3. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The parties provided consistent testimony that the tenant paid a security deposit of \$700.00 and the tenant was required to pay rent of \$1,500.00 every month. The parties provided consistent testimony that rent has not been paid for the months of September 2019 onwards.

The tenant testified that she moved her possessions out of the rental unit on November 1, 2019; however, her daughter and her daughter's possessions remain in the rental unit. The tenant stated that her daughter was hoping to pay the landlord some money and continue the tenancy. The tenant made it clear that she wants to end her obligation under the tenancy agreement and was agreeable to the landlord receiving an Order of Possession to bring her obligation to an end. The landlord proposed an Order of Possession with an effective date of November 15, 2019 and the tenant consented to that date.

As far as rental arrears and losses, the landlord's agent requested recovery of unpaid rent of \$1,500.00 for September 2019; \$1,500.00 for October 2019; and \$750.00 for the period of November 1 – 15, 2019. The tenant was agreeable that amount is payable to the landlord since rent was unpaid and the landlord has yet to receive possession of the rental unit. The tenant also stated she had already given the landlord consent to retain her security deposit to be used toward the rental arrears.

Analysis

Based on the written tenancy agreement, I find that the only tenant who has rights and obligations under the tenancy agreement or the Act is the tenant identified on this decision. The tenant's daughter does not have standing as a tenant, and I consider her to be an occupant under the tenant's tenancy agreement. Since the tenant wants her obligations under her tenancy to come to an end, she is obligated to ensure vacant possession is returned to the landlord and that includes any occupants that obtained occupancy under her tenancy agreement. Should the landlords wish to enter into a new tenancy agreement with MK that will between those parties to enter into a tenancy agreement by mutual agreement; however, that is beyond the scope of this proceeding which involves the tenancy between the landlords and LK only.

Based on the mutual agreement between the parties during the hearing, I provide the landlords with an Order of Possession effective at 1:00 p.m. on November 15, 2019. As such, the tenant and any other occupant of the rental unit must return vacant possession of the rental unit to the landlords no later than that date and time.

I heard undisputed testimony that rent has not been paid for the month of September 2019 onwards, and based on the mutual agreement between the parties, I find the landlords entitled to recover unpaid and/or loss of rent from the tenant for the period of September 1, 2019 through to November 15, 2019. Therefore, I award the landlord unpaid and/or loss of rent in the amount of \$3,750.00 [\$1,500.00 x 2.5 months].

I further award the landlords recovery of the \$100.00 they paid for this Application for Dispute Resolution.

By way of this decision, I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords.

In keeping with all of the above, I provide the landlords with a Monetary Order to serve and enforce upon the tenant, as calculated below:

Unpaid/loss of rent: Sept 1, 2019 to Nov 15, 2019	\$3,750.00
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Filing fee	100.00
Less: security deposit	<u>(700.00)</u>
Monetary Order for landlords	\$3,150.00

Conclusion

The landlords are provided an Order of Possession effective at 1:00 p.m. on November 15, 2019.

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance of \$3,150.00 to serve and enforce upon the tenant.

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 05, 2019

Residential Tenancy Branch